FEES APPLICABLE TO THE NATURAL GAS POLICY ACT—Continued

Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302)	10,930
2. Review of a Department of Energy remedial order:.	
Amount in controversy:	
\$0–9,999. (18 CFR 381.303(b))	100
\$10,000–29,999. (18 CFR 381.303(b))	600
\$30,000 or more. (18 CFR 381.303(a))	15,960
3. Review of a Department of Energy denial of adjustment:.	
Amount in controversy:	
\$0–9,999. (18 CFR 381.304(b))	100
\$10,000–29,999. (18 CFR 381.304(b))	600
\$30,000 or more. (18 CFR 381.304(a))	8,370
4. Written legal interpretations by the Office of the General Counsel. (18 CFR 381.305(a))	3,130
Fees Applicable to Natural Gas Pipelines:	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	1,000
Fees Applicable to Cogenerators and Small Power Producers:	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	9,400
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	10,640
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	1,350
Fees Applicable to the Public Utility Regulatory Policies Act of 1978:	
1. 5 Megawatt exemption application. (18 CFR 381.601)	21,860

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends Part 381, chapter I, title 18, *Code of Federal Regulations,* as set forth below.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; and 49 U.S.C. 1–27.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing "§ 10,810" and adding "§ 10,930" in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing "§ 15,780" and adding "§ 15,960" in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing "§ 8,270" and adding "§ 8,370" in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing "§ 3,100" and adding "§ 3,130" in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing "§ 5,380" and adding "§ 5,440" in its place.

§ 381.404 [Amended]

7. Section 381.404 is amended by removing "§ 110" and adding "§ 120" in its place.

§ 381.505 [Amended]

8. In § 381.505, paragraph (a) is amended by removing "§ 9,300" and adding "§ 9,400" in its place and by removing "§ 10,520" and adding "§ 10,640" in its place.

§ 381.601 [Amended]

9. Section 381.601 is amended by removing "§ 20,620" and adding "§ 21,860" in its place.

§ 381.801 [Amended]

10. Section 381.801 is amended by removing "§ 1,000" and adding "§ 1,350" in its place.

[FR Doc. 94–11886 Filed 5–16–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 123, 145 and 178

[T.D. 94–47]

RIN 1515–AB40

Elimination of Certain Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Programs and Provisions

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs. These provisions and programs involve the following: (1) American goods returned; (2) U.S.-made photographic films and dry plates returned after having been exposed abroad; (3) goods exported for repairs or alterations; (4) U.S.-processed metal articles exported for further processing; (5) the Generalized System of Preferences; and (6) the Caribbean Basin Initiative. The amendments reduce regulatory procedures and paperwork and thus facilitate the entry process for both the public and Customs without affecting the ability of Customs to ensure compliance with the basic legal requirements under these provisions and programs.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

In order to reduce regulatory procedures and paperwork and thus facilitate the merchandise entry process, on January 15, 1993, Customs published in the **Federal Register** (58 FR 4615) a notice of proposed rulemaking to amend the Customs Regulations by removing certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs.

The substantive proposals set forth in the document involved the following:

1. In order to eliminate procedural burdens and delays and duplications of information collection, it was proposed to remove or revise certain paragraphs within § 10.1 of the Customs Regulations (19 CFR 10.1) to eliminate use of Customs Form 3311, Declaration for Free Entry of Returned American Products, for purposes of (a) duty-free treatment on products of the United States which are returned without having been advanced in value or improved in condition while abroad, as provided in subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS), and (b) duty-free treatment on certain photographic films and dry plates manufactured in the United States and exposed abroad, as provided in subheading 9802.00.20, HTSUS. As a consequence of the elimination of Customs Form 3311 for purposes of these two tariff provisions,

the document also proposed to amend § 10.1 to require submission of a new declaration by the owner, importer, consignee or agent setting forth certain necessary and nonduplicative information elements contained on Customs Form 3311 and, where the returned article has a value of $1,000 or more and is not clearly marked with the name and address of the U.S. manufacturer, to allow the district director to require such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment.

2. Again in order to eliminate procedural burdens and delays and duplications of information collection, it was proposed to revise §§ 10.8 and 10.9 of the Customs Regulations (19 CFR 10.8 and 10.9) to eliminate use of Customs Form 4455, Certificate of Registration, for articles exported for repairs, alterations or processing and returned to the United States with a claim for reduced-duty treatment under subheading 9802.00.40, 9802.00.50 or 9802.00.60, HTSUS. As a consequence of the elimination of Customs Form 4455 for purposes of these three tariff provisions, the document also proposed to amend §§ 10.8 and 10.9 to set forth a new standard format for the declaration by the owner, importer, consignee or agent required under the regulations in order to reflect certain necessary and nonduplicative information elements contained on Customs Form 4455.

3. Finally, in order to reduce unnecessary paperwork, the document proposed to amend the Customs Regulations by eliminating use of the Certificate of Origin Form A in connection with claims for duty-free treatment under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI), principally by revising § 10.173 (19 CFR 10.173) in the case of the GSP and § 10.198 (19 CFR 10.198) in the case of the CBI. Under the revised sections, the existing GSP or CBI Declaration would, if requested by Customs, serve as the basic documentary evidence to support the claim for duty-free treatment for merchandise not wholly the growth, product, or manufacture of the producing country and, in the case of merchandise which is wholly the growth, product, or manufacture of the producing country, a statement to that effect would have to be included on the commercial invoice or entry summary.

The notice of proposed rulemaking invited public comments on the proposals, which would be considered before adoption of a final rule. The public comment period closed on March 16, 1993.

Analysis of Comments

A total of eight commenters responded to the solicitation of comments during the public comment period. Of these, four commenters put forth no objections to the proposed regulatory changes and affirmatively supported one or more aspects thereof. The remaining commenters, although generally supportive of the purpose of the proposed amendments, also presented some objections and suggested some changes regarding the proposals. These objections and suggested changes, and the Customs responses thereto, are set forth below.

Comment: It is unclear how the elimination of Customs Forms 3311 and 4455 in the circumstances described in the notice would eliminate an administrative burden on Customs and provide benefits to the trade community when essentially the same information will be required in a different format (*e.g.*, "statements" and "declarations"). The change may add an element of confusion which could negate the simplification efforts. Customs Form 3311 should be retained for articles entered under subheading 9801.00.10, HTSUS, as the form is concise, provides all the information needed by Customs, and would eliminate the need for a new document (the declaration by the owner, importer, consignee or agent). Although present § 10.1(a)(3) requires the certificate of exportation on the bottom portion of Customs Form 3311 to be executed by the district director at the port of exportation, the current version of CF 3311 contains no certificate of exportation.

Customs response: The comment regarding the certificate of exportation is correct. However, Customs notes that the present regulatory provision would take precedence so as to require a certificate of exportation even where the extant form does not include it. The elimination of Customs Form 3311 in the circumstances set forth in the notice will rectify this anomalous situation, and it is further noted that where Customs Form 3311 would continue in use, the underlying regulatory provisions (§§ 10.1 (g), (h), (i) and (j)) either do not mention, or expressly provide for non-use of, the certificate of exportation.

Customs continues to believe that the elimination of Customs Forms 3311 and 4455 under the circumstances set forth in the notice would save time and expense for both Customs and the importing community. Although the proposed amendments to § 10.1 would require the submission of a new document (the declaration by the owner, importer, consignee or agent) to reflect certain information elements of Customs Form 3311, the declaration would not include other information available elsewhere in the entry package but currently required by Customs Form 3311. Such latter information includes the port and district, the date, the entry number and date, and the marks, numbers, description and value of the articles returned.

Similar benefits would result from the elimination of Customs Form 4455 for articles entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS. The proposed amendments to §§ 10.8 and 10.9 would eliminate the frequently impractical and time-consuming procedure involving examination of the goods and endorsement of the Customs Form 4455 by a Customs officer prior to exportation. In addition, certain information set forth elsewhere in the entry package but currently required to be provided on Customs Form 4455 would no longer be required, including the name of the exporting carrier, the bill of lading or insured number, the reason the articles are exported, a description of the articles, and the number and kind of packages.

Although some confusion on the part of the trade community and Customs may be inevitable whenever documentation requirements are eliminated or changed in some way, Customs believes that the benefits which would accrue from eliminating unnecessary procedures and redundant information collections far outweigh any temporary difficulties that may result. In order to minimize any confusion which could otherwise result when the proposed amendments to §§ 10.1, 10.8 and 10.9 (as well as to §§ 10.173 and 10.198 relating to the elimination of the Certificate of Origin Form A) take effect as a final rule, Customs will issue appropriate instructions to Customs field offices, for dissemination to the trade community as well, regarding the changed documentation requirements.

Comment: There is no need to require that the declaration by the owner, importer, consignee or agent provided for in proposed § 10.1(a)(2) include the reason for the return of the U.S.-origin article. This information is already provided to Customs when the importer inserts on the entry summary the appropriate statistical suffix under subheading 9801.00.10, HTSUS.

Customs response: Customs agrees. Accordingly, § 10.1(a)(2) as set forth below has been modified to not include in the declaration by the owner, importer, consignee, or agent the reason for the return of the articles.

Comment: The reference in paragraphs (a) and (b) of proposed § 10.1 to "$1,000" should be replaced by "$1,250" which is currently the general maximum for informal entries.

Customs response: Customs agrees. Accordingly, the references to "$1,000" are changed to "$1,250" in §§ 10.1(a) and (b) as set forth below.

Comment: Proposed § 10.1(b) gives the district director discretion to require "such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment" where the value of the returned articles exceeds $1,000 and they are not clearly marked with the name and address of the U.S. manufacturer. This provision should be revised to specifically identify the kind of additional documentation and evidence that would be acceptable, as well as the circumstances under which such documentation or evidence could be requested. Without this change, there would be no limit to the number and types of documents and evidence that district directors could require, perhaps resulting in increased, rather than reduced, paperwork as well as less administrative uniformity among the Customs districts.

Customs response: As a general proposition, an importer must meet its burden of satisfying a district director that articles are entitled to duty-free treatment under subheading 9801.00.10 or 9802.00.20, HTSUS. It is a common practice for district directors to request a statement from the U.S. manufacturer of the article verifying that the article was, in fact, made in the United States. In order to ensure that only those articles meeting the conditions and requirements of these tariff provisions will receive duty-free treatment, Customs believes it is important for district directors to have the discretion to require a U.S. manufacturer's certificate or some other appropriate document or other evidence of U.S. origin.

Proposed § 10.1(b) was derived, to a great extent, from the following sentence which appears on the current version of Customs Form 3311:

> If the value of the article is $10,000 or more and the articles are not clearly marked with the name and address of U.S. manufacturer, please attach copies of any documentation or other evidence that you have that will support or substantiate your claim for duty-free status as American Goods Returned.

Proposed § 10.1(b) contained a $1,000 minimum amount (changed in this document to $1,250 as stated above) rather than the $10,000 used in the above-quoted sentence because (1) the $1,000 figure appears in present § 10.1(b) which is analogous in function to proposed § 10.1(b), and (2) it was determined that use of the higher amount would unnecessarily restrict the district director's ability to ensure that only articles meeting the terms of subheading 9801.00.10 or 9802.00.20, HTSUS, would receive duty-free treatment. It should be noted that whereas the submission of additional documentation or evidence is required by the above-quoted sentence on Customs Form 3311 under the described circumstances, it was made discretionary with the district director in proposed new § 10.1(b).

Customs agrees that new § 10.1(b) should set forth examples of the types of additional documentation or evidence that would be acceptable. Accordingly, the following second sentence has been added to § 10.1(b) as set forth below: "Such documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles."

Comment: The declaration by the foreign shipper presently required in § 10.1(a)(1) (which would remain unchanged in the proposed amendments to § 10.1) should be eliminated because it is rarely submitted or required. Moreover, since the foreign shipper usually has no specific knowledge of the origin of the returned article, his/her statement regarding the U.S. origin of the article is meaningless.

Customs response: Customs does not agree that the declaration of the foreign shipper presently required by § 10.1(a)(1) should be eliminated. It contains information which assists the district director in determining whether the imported articles meet the conditions and requirements of subheading 9801.00.10, HTSUS, such as whether the articles were advanced in value or improved in condition while abroad. The declaration similarly assists the district director in regard to entries under subheading 9802.00.20, HTSUS. If the district director determines that this declaration is unnecessary, he/she may waive production of the document pursuant to § 10.1(d).

It is true that in most cases the foreign shipper will not have specific knowledge of the U.S. origin of the returned article. For this reason, and because the declaration of the owner, importer, consignee or agent includes the identity and location of the U.S. manufacturer, Customs agrees that the portion of the declaration of the foreign shipper regarding the U.S. origin of the article should be deleted. Section 10.1(a)(1), as set forth below, has been modified accordingly.

Comment: The documentation requirements in proposed § 10.8 fail to cover articles entered duty free under statistical suffix 10 of subheading 9802.00.50, HTSUS. This statistical breakout encompasses "Articles for which duty free treatment is claimed under U.S. Note 2(b) to this subchapter" (Subchapter II, Chapter 98, HTSUS). Note 2(b) provides that no article (except textile and apparel articles, petroleum and certain petroleum products) may be treated as a foreign article or as subject to duty if it is assembled or processed in a CBI beneficiary country wholly of components or ingredients of U.S. origin and neither the article nor the components or ingredients enters the commerce of a non-CBI country.

Customs response: The statutory provision (section 222 of the Customs and Trade Act of 1990, Public Law 101–382, 104 Stat. 629) which amended Note 2 to create this separate duty-free program failed to provide for a separate HTSUS subheading under which articles qualifying for such treatment may be entered. Therefore, as a matter of administrative convenience, statistical suffix 10 of subheading 9802.00.50, HTSUS, was specifically created for the entry of certain Note 2(b) articles. The conditions and requirements of Note 2(b) are entirely different from those of subheading 9802.00.50, HTSUS. Thus, Customs believes that including the documentation requirements for Note 2(b) articles in § 10.8 would be unnecessarily confusing. Customs intends to publish separate regulatory proposals relating to Note 2(b) in the near future.

Comment: The notice proposes to eliminate the requirement in §§ 10.173 and 10.198 that the importer or consignee file a Certificate of Origin Form A with Customs in connection with the entry of articles for which duty-free treatment is claimed under the GSP and CBI. Why is the Form A also not being eliminated as a documentation requirement under the U.S.-Israel Free Trade Area Implementation Act of 1985?

Customs response: Unlike the GSP and CBI, the U.S.-Israel Free Trade Area (FTA) Agreement specifically provides in Annex 3 for the submission of a Certificate of Origin when the claim for duty-free or reduced-duty treatment is made. Therefore, eliminating the

Certificate of Origin Form A for articles claimed to be entitled to special tariff treatment under the U.S.-Israel FTA would require modifications to the Agreement itself. The United States cannot undertake such action unilaterally.

Comment: Proposed §§ 10.173(a)(2) and 10.198(a)(2), relating to the GSP and CBI, respectively, provide that where merchandise covered by a formal entry is wholly the growth, product, or manufacture of a single beneficiary country, a statement to that effect shall be included on the commercial invoice and entry summary. Requiring the statement on both the commercial invoice and entry summary is a wasteful duplication of information collection; it should be required only on the invoice.

Customs response: Customs agrees that the statement should be required only on the commercial invoice provided to Customs. Sections 10.173(a)(2) and 10.198(a)(2) as set forth below have been modified accordingly.

Comment: While the "wholly the growth, product or manufacture" statement is required by proposed §§ 10.173(a)(2) and 10.198(a)(2), no such similar statement is required by proposed §§ 10.173(a)(1) and 10.198(a)(1), relating to merchandise which is not "wholly the growth, product, or manufacture" of a beneficiary country. With the elimination of the Form A, it would be prudent to require, with respect to all merchandise for which GSP or CBI treatment is requested, a statement on the commercial invoice that the merchandise either is or is not "wholly the growth, product or manufacture" of a beneficiary country and that the merchandise satisfies all of the GSP or CBI requirements for duty-free entry. The proposed regulations should authorize the district director to waive the requirement for such a statement on the commercial invoices where he/she is otherwise satisfied that the merchandise qualifies for GSP or CBI treatment.

Customs response: In instances in which the commercial invoice does not include a statement that the merchandise is "wholly the growth, product or manufacture" of a beneficiary country, Customs believes that it can reasonably be inferred that the merchandise is not such. Thus, it is not necessary to require the suggested negative statement in those instances. Moreover, it is Customs position that when a claim for GSP or CBI treatment is made, the importer is asserting that the merchandise satisfies all of the GSP or CBI requirements for duty-free entry. Therefore, there is no need to require a separate statement on the commercial invoice that the merchandise satisfies those requirements.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and set forth below. As a consequence of the adoption of these substantive regulatory amendments, this document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. The regulations eliminate duplicative or otherwise unnecessary paperwork requirements and thus reduce the regulatory burden and consequent economic impact on those entities which file claims for tariff treatment under the subject provisions and programs. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1515–0194. The estimated average annual burden associated with this collection is .6 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, Mexico.

19 CFR Part 145

Customs duties and inspection, Imports, Postal service.

19 CFR Part 178

Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 10, 123, 145 and 178, Customs Regulations (19 CFR parts 10, 123, 145 and 178), are amended as set forth below.

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

1. The general authority citation for Part 10 is revised, and the specific authority citations for §§ 10.171 through 10.178 and §§ 10.191 through 10.198 continue to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Sections 10.171 through 10.178 also issued under 19 U.S.C. 2461 *et seq.*;

Sections 10.191 through 10.198 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. In § 10.1, paragraph (a)(3) is removed, and the introductory text of paragraph (a), the introductory text and paragraph of the declaration by the foreign shipper before the table in paragraph (a)(1), paragraphs (a)(2), (b), (d), (f) and (h)(2), the first sentence of paragraph (i), and the first sentence of paragraph (j)(2) are revised to read as follows:

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in paragraph (g), (h), (i) or (j) of this section or elsewhere in this part or in § 145.35 of this chapter, the following documents shall be filed in connection with the entry of articles in a shipment valued over $1,250 and claimed to be free of duty under subheading 9801.00.10 or 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the foreign shipper in substantially the following form:

I, __________________________, declare that to the best of my knowledge and belief the articles herein specified were exported from the United States, from the port of _______________ on or about _______________, 19_____, and that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

* * * * *

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the claim for free entry. If the owner or ultimate consignee is a corporation, such declaration may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in subpart C, part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. This declaration shall be in substantially the following form:

I, __________________________, declare that the (above) (attached) declaration by the foreign shipper is true and correct to the best of my knowledge and belief, that the articles were manufactured by _______________ (name of manufacturer) located in _______________ (city and state), that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS, and that the articles were exported from the United States without benefit of drawback.

____

(Date)

____

(Address)

____

(Signature)

____

(Capacity)

(b) In any case in which the value of the returned articles exceeds $1,250 and the articles are not clearly marked with the name and address of the U.S. manufacturer, the district director may require, in addition to the declarations required in paragraph (a) of this section, such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment. Such other documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles.

* * * * *

(d) If the district director is reasonably satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9801.00.10 or 9802.00.20, HTSUS, and related section and additional U.S. notes, he may waive the requirements for producing the documents specified in paragraph (a) of this section.

* * * * *

(f) In the case of photographic films and dry plates manufactured in the United States (except motion picture films to be used for commercial purposes) exposed abroad and entered under subheading 9802.00.20, HTSUS, the requirements of paragraphs (a) and (c) of this section are applicable except that the declaration by the foreign shipper provided for in paragraph (a)(1) to the effect that the articles "are returned without having been advanced in value or improved in condition by any process of manufacture or other means" shall be crossed out, and the entrant shall show on the declaration provided for in paragraph (a)(2) that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed and developed, and, in the case of motion picture films, that they will not be used for commercial purposes.

* * * * *

(h) * * *

(2) The documentation described in paragraph (a) of this section shall not be required in connection with an entry for nonconsumable vessel stores and equipment on Customs Form 3311.

* * * * *

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the United States and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under subheading 9801.00.10 on Customs Form 3311, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. * * *

(j) * * *

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit, free entry thereof may be made under subheading 9801.00.10, HTSUS, on Customs Form 3311 (a Customs Form 7501 must be submitted as well for such articles as provided in § 143.23(h) of this chapter), executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty.

* * *

3. Section 10.8 is revised to read as follows:

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I, _______________, _______________ declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _______________, 19_______________, from _______________ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see subchapter II, chapter 98, HTSUS)	Total value of articles after repairs or alterations

(Date)

(Address)

(Signature)

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, ________, ________ declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that such articles were exported from the United States for repairs or alterations and without benefit of drawback from ____________ (port) on ____________, 19____________; and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (above) (attached) declaration.

(Date)

(Address)

(Signature)

(Capacity)

(b) The district director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for repairs or alterations, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the district director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.40 or 9802.00.50, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.40 or 9802.00.50, HTSUS, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

4. Section 10.9 is revised to read as follows:

§ 10.9 Articles exported for processing.

(a) Except as otherwise provided for in this section, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for further processing and which are claimed to be subject to duty only on the value of the processing performed abroad under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the person who performed the processing abroad, in substantially the following form:

I, ________, ________ declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on ____________, 19 ______, from ____________ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of processing	Full cost or (when no charge is made) value of processing (see subchapter II, chapter 98, HTSUS)	Total value of articles after processing

(Date)

(Address)

(Signature)

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, ________, declare that the (above) (attached) declaration by the person who performed the processing abroad is true and correct to the best of my knowledge and belief; that the articles were manufactured in the United States by ____________ (name and address) or, if of foreign origin, were subjected to ____________ (show processes of manufacture, such as molding, casting, machining) in the United States by ____________ (name and address); that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that the articles were exported for processing and without benefit of drawback from ____________ (port) on ____________, 19 ______; that the articles entered in their processed condition are otherwise the same articles that were exported on the above date and that are identified in the (above) (attached) declaration; and that the returned articles will be subjected to ____________ (describe processing to be performed in the United States) by ____________ (name and address of U.S. processor).

(Date)

(Address)

(Signature)

(Capacity)

(b) The district director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for processing, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the district director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.60, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the processing. The cost or value of the processing outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.60, HTSUS, shall be limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing but shall not include the exported United States metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

§ 10.172 [Amended]

5. Section 10.172 is amended by removing the last sentence.

6. The section heading and the text of section 10.173 are revised to read as follows:

§ 10.173 Evidence of country of origin.

(a) *Shipments covered by a formal entry.*

(1) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country.*

(i) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter of the merchandise or other appropriate party having knowledge of the relevant facts 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. When requested by the district director, the declaration shall be prepared in substantially the following form:

GSP DECLARATION

I, ______________________ (name), hereby declare that the articles described below 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 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:

Number and date of invoices	Description of articles and quantity	Processing 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

Date ______________________
Address ______________________
Signature ______________________
Title ______________________

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission 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 appropriate party 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.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary developing country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the district director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any 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.

7. Section 10.175 is amended by removing paragraphs (c)(3) and (c)(4), redesignating paragraph (c)(5) as (c)(3), and revising paragraph (e)(1) to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 504, Trade Act of 1974, as amended (19 U.S.C. 2464), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export.

* * * * *

§ 10.192 [Amended]

8. Section 10.192 is amended by removing the last sentence.

9. Section 10.198 is revised to read as follows:

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry.*

(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country.*

(i) *Declaration.* 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 or other appropriate party having knowledge of the relevant facts 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. When requested by the district director, the declaration shall be prepared in substantially the following form:

CBI Declaration

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 U.S. 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 articles and quantity	Processing operations performed on articles		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 ______________________

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission 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 appropriate party 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.

(iii) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or in 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 (a)(1)(i) of this section shall be filed by the importer or consignee 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.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the district director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any 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.

PART 123—CUSTOMS RELATIONS WITH MEXICO AND CANADA

1. The authority citation for Part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1431, 1433, 1624;

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

2. Section 123.4(c) is amended by removing the reference "§ 10.1(f)" and adding, in its place, the reference "§ 10.1(i)".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 is revised, and the specific authority citation for §§ 145.35 through 145.38 and § 145.41 continues, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * *

§ 145.35 [Amended]

2. Section 145.35 is amended by removing the words "an importer's declaration on Customs Form 3311" and adding, in their place, the words "the declarations provided for in § 10.1(a) of this chapter".

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by revising the listings for §§ 10.1 and 10.173, removing the listings for §§ 10.8(e), 10.9(e), and 10.191–10.198 and adding, in their place respectively, listings for §§ 10.8, 10.9, and 10.198 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * *	* * *	*
§ 10.1	Declarations covering U.S. articles exported and returned without having been advanced in value or improved in condition.	1515–0194
§ 10.8	Declarations covering articles exported for repairs or alterations and returned	1515–0194
* * *	* * *	*
§ 10.9	Declarations covering metal articles exported for processing and returned for further processing	1515–0194
* * *	* * *	*
§ 10.173	Claim for duty-free entry of eligible articles under the Generalized System of Preferences	1515–0194
§ 10.198	Claim for duty-free entry of eligible articles under the Caribbean Basin Initiative	1515–0194
* * *	* * *	*

Approved: April 28, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 94–11856 Filed 5–16–94; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE15–1–6432; FRL–4885–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of establishing the Delaware Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP). The intended effect of this action is to approve of a program which ensures that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on June 16, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, Environmental Scientist, (215) 597–9781.

SUPPLEMENTARY INFORMATION: On January 12, 1994 (59 FR 1693), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Delaware Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The formal SIP revision was submitted by Delaware on January 11, 1993.

In order to gain full approval, the state program must provide for each of the following elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

Delaware Department of Natural Resources and Environmental Control is authorized to create and administer the SBTCP, and create the Small Business Ombudsman. Through an executive order, the Governor of the State of Delaware will establish the Compliance Advisory Panel.

Other specific requirements of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the Delaware Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a revision to the Delaware SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small Business Assistance Program.

Dated: May 14, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart I—Delaware

2. Part 52, subpart I is amended by adding section 52.460 to read as follows:

§ 52.460 Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(a) On January 11, 1993, the Director of the Delaware Department of Natural Resources and Environmental Control submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a State Implementation Plan revision, as required by title V of the Clean Air Act. EPA approved the Small Business Stationary Source Technical and Environmental Compliance Assistance Program on May 17, 1994, and made it a part of the Delaware SIP. As with all components of the SIP, Delaware must implement the program as submitted and approved by EPA.

[FR Doc. 94–11987 Filed 5–16–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–90–1]

RIN 2125–AC49

Parts and Accessories Necessary for Safe Operation; Front Wheel Brakes on Mexican Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting as a final rule an interim final rule requiring Mexican commercial motor vehicles (CMVs) operated in the United States to be equipped with brakes acting on all wheels. The interim final rule, published on November 24, 1989, allowed Mexican CMVs to operate without front wheel brakes until January 1, 1991 (54 FR 48616). Since January 1, 1991, Mexican CMVs have been required to comply with the front wheel brake requirements of the Federal Motor Carrier Safety Regulations (FMCSRs).

It is the intent of this final rule to remove obsolete language concerning the brake requirements from the FMCSRs.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 9102(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act) [Title IX, Subtitle B of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181, 4528] required the Secretary of Transportation to exempt certain foreign motor carriers from part 393 of the FMCSRs, for a period of one year, beginning on November 18, 1988. The Act also required the Secretary to submit a report to Congress on the effects of the delay in application of part 393 along with recommendations on the extent to which foreign motor carriers may or should be required to comply with all or any of the requirements contained in part 393.

The FHWA addressed the requirements of the Act by publishing a final rule and request for comments amending the general applicability provisions of the FMCSRs on March 24, 1989 (54 FR 12200). The required report to Congress was submitted in the form of a letter to Vice President Quayle and House Speaker Foley on September 29, 1989. The report recommended that the part 393 exemption created by the Act be allowed to lapse, with the exception of the front wheel brake requirement, and that Mexican motor carriers operating in border commercial zones be given until January 1, 1991, to comply with that standard. The report specifically recommended that the requirement for front wheel brakes apply to all Mexican CMVs manufactured on or after July 25, 1980, the effective date of the Federal Motor Vehicle Safety Standard No. 121 amendment requiring newly manufactured vehicles to be equipped with brakes on all axles. The report noted that a similar transition period was provided to both Canadian and U.S. motor carriers when the requirement was instituted in 1987.

Consistent with the recommendation in the Secretary's report to Congress, the FHWA published an interim final rule allowing Mexican CMVs to operate without front wheel brakes until January 1, 1991 (November 24, 1989, 54 FR 48616). The interim final rule amended § 393.42 to include an exemption to the front wheel brake requirement for Mexican trucks and truck tractors with three or more axles and manufactured on or after July 25, 1980.

Discussion of Comments

The FHWA received three comments in response to the interim final rule. The commenters were the Greater Las Cruces Economic Development Council, the Asociacion de Maquiladoras de Matamoros, A.C., and the U.S. Department of Agriculture, Office of Transportation (USDA).

The Greater Las Cruces Economic Development Council and the Asociacion de Maquiladoras de Matamoros both submitted comments, through U.S. Senators, in opposition to the provisions of the interim final rule. Both organizations enclosed a copy of an undated bulletin from the Border Trade Alliance (BTA), a grassroots organization of financial groups, businesses, trade associations, and others seeking to educate, build consensus, and solve problems related to border trade interests. The bulletin discussed two reports submitted to the Congress in response to the 1988 Act, the DOT report, and a second report prepared by the BTA. The BTA report recommended that Mexican trucks manufactured post-1981 be exempted from the front wheel brake requirement, and that pre-1981 vehicles not be subject to the requirements of part 393 at all. The rationale provided was that Mexico's farmers operate older, pre-1981 vehicles, and that "any restriction on the entry of these vehicles would seriously affect agricultural trade between the U.S. and Mexico * * *. Despite the lack of general compliance with U.S safety equipment standards, accident and insurance data indicated that these vehicles do not represent a threat to public safety, i.e., they are road worthy, and therefore should not be prohibited access to U.S. border commercial zones. These findings indicate that different manufacturing standards in Mexico do not compromise safety in U.S. border communities." The BTA's bulletin added that the DOT report "was submitted without the thorough investigation mandated by Congress." The bulletin proposed that the DOT consider exempting "older vehicles of Mexican manufacture" from the requirements of part 393 for a period of 3 years from January 1, 1991, the effective date for Mexican motor carriers to comply with § 393.42. Neither the Greater Las Cruces Economic Development Council nor the Asociacion de Maquiladoras de Matamoros provided a copy of BTA's report to Congress in their submittals to the docket. The BTA's bulletin did not include even summary information on accident or insurance data.

The FHWA notes that § 393.42(b)(1)(i) provides an exception to the general requirement for CMVs to be equipped with brakes acting on all wheels: Trucks or truck tractors having three or more axles need not have brakes on the front wheels if the vehicle was manufactured before July 24, 1980. Therefore, nearly all pre-1981 three axle trucks and truck tractors would automatically be covered by this exception.

The USDA submitted comments in support of the interim final rule. The USDA maintained that prohibiting Mexican motor carriers access to border commercial zones would have a significant economic impact on U.S.-Mexico border communities and overall agricultural trade between the U.S. and Mexico. The agency supported the transition period the FHWA provided for Mexican motor carriers to comply with § 393.42. The USDA agreed with the FHWA's decision that the transition period not extend beyond January 1, 1991.

Over three years have passed since the end of the transition period announced in the 1989 interim final rule. As the North American Free Trade Agreement (NAFTA) is implemented, cross-border trade will increase. Although the BTA has asserted that Mexican CMVs do not compromise safety in U.S. border communities, the FHWA notes that, in accordance with the access phase-in schedule in NAFTA, these CMVs will no longer be restricted to commercial border zones, but may begin operating well into the interior of the U.S., and into Canada. It is imperative that all CMVs using the U.S. highways do so with a high level of safety. The U.S., Canada, and Mexico are working together to harmonize their CMV safety regulations applicable to drivers, vehicles, and motor carriers.

FHWA Decision

The FHWA believes the interim final rule should be adopted as a final rule. The deadline for compliance with the front wheel brake requirement has passed with no indication that the requirement has had an adverse impact on Mexican motor carriers. Contrary to the assertions of the Greater Las Cruces Economic Development Council and the Association de Maquiladoras de Matamoros, the FHWA does not believe that exceptions to the requirements of part 393 in general, or the front wheel brake requirements in particular, are necessary for Mexican motor carriers. The DOT Report to Congress provides a thorough analysis of the issue and fully supports the FHWA's decision to require that Mexican CMVs manufactured on or after July 25, 1980, be equipped with front wheel brakes.

The FHWA notes that part 393 of the FMCSRs provides basic equipment standards intended to help ensure the safe operation of CMVs within the United States regardless of the principal place of business of the motor carrier. As such, all CMVs operated in the United States and manufactured on or after July 25, 1980, must be equipped with front wheel brakes.

In consideration of the January 1, 1991, expiration date for the exception to the front wheel brake requirements for Mexican CMVs, the FHWA is amending § 393.42 to remove this exception found at § 393.42(b)(4).

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This final rule merely adopts the interim final rule which allowed Mexican motor carriers until January 1, 1991, to comply with the requirements of § 393.42. Since the January 1, 1991, expiration date for the exemption has passed, and CMVs subject to the FMCSRs are currently required to comply with all applicable requirements of part 393, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FHWA has evaluated the effects of this rule on small entities. This final rule adopts the November 24, 1989, interim final rule which allowed Mexican motor carriers until January 1, 1991, to comply with the requirements of § 393.42. Since the January 1, 1991, expiration date for the exemption has passed, and CMVs subject to the FMCSRs are currently required to comply with all applicable requirements of part 393, the FHWA believes the economic impact on small entities will be minimal. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Parts and accessories.

Issued on: May 9, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, part 393, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

§ 393.42 [Amended]

2. In § 393.42, paragraph (b)(4) is removed.

[FR Doc. 94–11962 Filed 5–16–94; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 526

[Docket No. 93–25; Notice 2]

RIN 2127–AE65

Petitions and Plans for Relief Under the Automobile Fuel Efficiency Act of 1980

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule addresses the agency regulations setting forth content requirements for petitions to be submitted by automobile manufacturers to obtain relief from certain aspects of the Corporate Average Fuel Economy (CAFE) program. NHTSA is rescinding those portions of the regulations that are no longer needed, and updating certain others.

DATES: The amendments made by this rule are effective June 16, 1994. Petitions for reconsideration should be submitted by June 16, 1994.

ADDRESSES: Submit petitions for reconsideration to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590, (202) 366–0846.

SUPPLEMENTARY INFORMATION:

I. History

In 1972, Congress enacted the Motor Vehicle Information & Cost Saving Act ("the Act") (15 U.S.C. 1901, *et seq.*). Title V, Improving Automotive Efficiency (15 U.S.C. 2001–13) was added to the Act in 1975. Title V established the CAFE program.

The Act specifies that, in general, each manufacturer's domestically manufactured (*i.e.*, those with at least 75 percent U.S. or Canadian content) and imported passenger automobiles must comply separately with CAFE standards. This provision was originally enacted to discourage domestic auto manufacturers from merely importing increasing numbers of fuel efficient, foreign produced cars to comply with standards.

In 1980, Congress determined that the original provision regarding domestic content could have two undesired effects. First, it could discourage foreign manufacturers that wished to begin U.S. production. Second, it could discourage manufacturers that wished to transfer a non-domestic automobile to their domestic fleets by gradually increasing the domestic content of the automobile. In response to these and other concerns, Congress passed the Automobile Fuel Efficiency Act (AFEA), amending Title V of the Act by adding a number of provisions intended to facilitate compliance with the CAFE standards.

To address the first situation, Congress adopted a provision, found in section 503(b)(3) of the Act, applicable to foreign manufacturers that began U.S. production either (1) after December 22, 1975 and before May 1, 1980 or (2) on or after May 1, 1980 and for at least one model year ending on or before December 31, 1985. Such manufacturers could be exempted from the Act's requirements that their fleets be separated into domestic and non-domestic subfleets for CAFE compliance purposes if they submitted, and NHTSA approved, a petition demonstrating that granting the exemption would not adversely affect employment in the U.S. automobile industry.

To address the second situation, Congress added section 503(b)(4) to the Act. It applies to a manufacturer that wishes to convert a vehicle from non-domestic to domestic status over a period of several model years, and to begin including the vehicle in its domestic fleet from the very beginning of the conversion period. There is no model year limitation on exercising this provision. To obtain exemption from the domestic content provision under section 503(b)(4), a petitioner must show that (among other things) it would achieve at least 75 percent domestic content within four model years.

The AFEA also made a number of other amendments to the Act. It added section 502(k) to the Act to authorize special relief for manufacturers that were unable to comply with one or more of the 4-wheel drive (4WD) light truck fuel economy standards in MYs 1982–85.

Finally, the AFEA added section 502(l) to the Act to authorize special relief for manufacturers that fell short of a fuel economy standard in one year, but expected to exceed a fuel economy standard in a future model year. Section 502(l) provides that the credits that a manufacturer expects to earn for a future model year can be made available up to three years in advance of that year in order to offset civil penalties which would otherwise be assessed for a shortfall in one of those three years, provided that the manufacturer submits (and the agency approves) a plan for earning the necessary credits in the future, and that the manufacturer actually earns the credits.

On July 29, 1982, the agency published a final rule establishing part 526 setting forth requirements for the contents of petitions to obtain the various types of relief authorized by the AFEA's amendments to the Act. (47 FR 32721). The principal provisions of part 526 are:

- Section 526.2, specifying requirements relating to section 503(b)(3) (commencement of U.S. production);
- Section 526.3, specifying requirements relating to 503(b)(4) (transfer of models from non-domestic to domestic fleet);
- Section 526.4, specifying requirements relating to section 502(k) (adjustment of CAFE standards for 4-wheel drive light trucks); and
- Section 526.5, specifying requirements relating to section 502(l) (offsetting compliance shortfall with future credits).

On May 20, 1993, the agency published a NPRM (58 FR 29378) proposing to rescind those sections of the implementing regulation that were no longer required because the passage of time rendered them obsolete, and to amend certain language in the regulation that was inconsistent (*e.g.*, different ways of referring to the same statutory text).

Since NHTSA did not receive any comments in response to the NPRM, it is adopting the amendments as proposed. This final rule rescinds certain parts of the implementing regulation, and makes the other minor changes that are fully described below.

II. Changes to Part 526

A. Rescission of § 526.4, Relating to the Adjustment of Fuel Economy Standards for 4-Wheel Drive Light Trucks

Section 526.4 describes the procedures for manufacturers to petition for relief from light truck CAFE standards applicable to 4WD light trucks for MYs 1982–85. This procedure implements section 502(k) of the Act.

To be granted the relief provided by section 502(k) with respect to one or more of those model years, a manufacturer must demonstrate that it cannot meet the fuel economy standard for that year without suffering a severe economic impact, such as plant closures or layoffs. Although the timing of the petition is not expressly specified, the use of the subjunctive mood regarding the finding to be made by the agency indicates that the petition had to be filed before the start of the model year for which the relief was requested. No petitions were filed under this section for these long past model years.

Accordingly, NHTSA believes that section 502(k) and its implementing regulatory provision in § 526.4 are moot. The agency is therefore rescinding this provision.

B. Deletion of Final Sentence of § 526.5(a) Relating to Separation of Light Truck Fleets Into 2-Wheel and 4-Wheel Drive Fleets

Section 526.5 specifies the content of manufacturers' plans for earning CAFE credits in future years to offset current year penalties. The provision implements section 502(l) of the Act. As noted above, under section 502(l), a manufacturer may avoid violating the Act and paying a civil penalty for falling short of a standard in one model year if the manufacturer submits to the agency a plan showing that it reasonably anticipates earning enough credits during the next three model years to offset the shortfall.

A portion of § 526.5 has become moot. The last sentence in § 526.5(a) provides that the information specified in § 526.4(e) is to be submitted in connection with any contemplated transfer of CAFE credit between classes of light trucks. As noted above, all of § 526.4 is being rescinded by this notice. Accordingly, the agency is also deleting the last sentence of § 526.5(a). The meaning of § 526.5(a) will remain unchanged.

C. Redesignation of Citations to AFEA

Although the regulatory relief provisions of the AFEA were added by the AFEA to the Act, part 526 does not uniformly cite the Act. For example, the part references the relevant sections of the AFEA whenever it discusses petitions and plans specified by the AFEA, but references the Act in other places. The lack of consistency in the citations is a potential source of confusion and inconvenience to the public. Therefore, the agency is converting all references in part 526 to the AFEA into references to the corresponding sections of the Act.

D. Change to Title of 49 CFR 526.3

The title of § 526.3 is being changed from "Transfer of vehicle from foreign to U.S. production" to "Transfer of vehicle from non-domestic to domestic fleet." Section 526.3 implements section 503(b)(4) of the Act, which allows manufacturers to average certain non-domestic models with their domestic fleets if (1) these models have not been previously domestically manufactured, (2) these models have at least 50 percent domestic content, and (3) the manufacturer will raise the domestic content of these models to a minimum of 75 percent within four model years. Section 503(b)(4) of the Act says nothing about actually "transferring" a vehicle from foreign to domestic "production". A vehicle assembled in the U.S. or Canada, but containing less than 75 percent domestic content, could be eligible under this provision. Additionally, there is no reference to any specific country as a production site. The change in the title of § 526.3 will therefore reflect more accurately the language of the Act.

E. Change in Text of 49 CFR 526.3(a)

Section 503(b)(4)(A)(ii) of the Act states that at least 50 percent of the cost to the manufacturer of each automobile covered by the manufacturer's petition regarding transfer from non-domestic fleet to domestic fleet should be attributable to "value added in the United States or Canada." By adding the words "or Canadian" to the phrase "those with 50 to 75 percent U.S. value added," the text of § 526.3(a) will accurately reflect the meaning of the Act. Additionally, for the sake of clarification, the wording of § 526.3(a) will read "those with at least 50 percent, but less than 75 percent."

III. Regulatory Analysis

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

This notice was not reviewed under Executive Order 12866. The agency has considered the economic implications of these amendments and determined that these amendments are not significant within the meaning of the DOT Regulatory Policies and Procedure. No regulatory evaluation was prepared by the agency because the amendments to the regulation will not have any economic effects. The primary effect of the amendments will be to remove from the Code of Federal Regulations content requirements for a type of petition that can no longer by submitted to the agency.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has considered the impact that this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. As noted above, these amendments will not have any economic effects. In the case of small businesses, small organizations, and small governmental units which purchase automobiles and light trucks, these amendments will not affect the availability of fuel efficient automobiles or light trucks or have any significant effect on the overall cost of purchasing and operating an automobile or light truck.

C. Impact of Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the action does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 509(a) of the Act (15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Section 504 of the Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Environmental Impacts

The agency has analyzed the environmental impacts of the amendments to part 526 in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. The agency has concluded that they will not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 526

Energy conservation, Motor vehicles.

PART 526—[AMENDED]

In consideration of the foregoing, 49 CFR part 526 is amended to read as follows:

1. The authority citation for part 526 is revised to read as follows:

Authority: 15 U.S.C. 2002 and 2003; delegation of authority at 49 CFR 1.50.

2. Section 526.1(b) and (c) are revised to read as follows:

§ 526.1 General provisions.

* * * * *

(b) *Address.* Each petition and plan submitted under the applicable provisions of sections 502 and 503 of the Motor Vehicle Information and Cost Savings Act must be addressed to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(c) *Authority and scope of relief.* Each petition or plan must specify the specific provision of the Motor Vehicle Information and Cost Savings Act under which relief is being sought. The petition or plan must also specify the model years for which relief is being sought.

3. The introductory text of § 526.2 is revised to read as follows:

§ 526.2 U.S. production by foreign manufacturer.

Each petition filed under section 503(b)(3) of the Motor Vehicle Information and Cost Savings Act must contain the following information:

* * * * *

4. The heading, introductory text and introductory text of paragraph (a) of § 526.3 are revised to read as follows:

§ 526.3 Transfer of vehicle from non-domestic to domestic fleet.

Each plan submitted under section 503(b)(4) of the Motor Vehicle Information and Cost Savings Act must contain the following information:

(a) For each model year for which relief is sought in the plan and for each model type of automobile sought to be included by the submitter in its domestic fleet under the plan (i.e., those with at least 50 percent but less than 75 percent U.S. or Canadian value added), provide the following information:

* * * * *

§ 526.4 [Removed and Reserved]

5. Section 526.4 is removed and reserved.

6. The introductory text and paragraph (a) of § 526.5 is revised to read as follows:

§ 526.5 Earning offsetting monetary credits in future years.

Each plan submitted under section 502(l) of the Motor Vehicle Information and Cost Savings Act must contain the following information:

(a) Projected average fuel economy and production levels for the class of automobiles which may fail to comply with a fuel economy standard and for any other classes of automobiles from which credits may be transferred, for the current model year and for each model year thereafter ending with the last year covered by the plan.

* * * * *

Issued: May 11, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–11918 Filed 5–16–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 93–58; Notice 02]

RIN 2127–AE74

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard (FMVSS) 120, Tire Selection and Rims for Motor Vehicles Other than Passenger Cars, to permit the date of manufacture of wheel rims to be shown by means of appropriate symbols rather than numerically as presently required by FMVSS 120. This will give manufacturers increased flexibility in achieving compliance.

DATES: The amendment made in this final rule is effective June 16, 1994.

Any petitions for reconsideration must be received by NHTSA not later than June 16, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers of this notice and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., room 5109, Washington, DC 20590. Docket room hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., room 5307, Washington, DC 20590. Telephone: (202) 366–4803.

SUPPLEMENTARY INFORMATION:

Background

Section S5.2, Rim Marking, FMVSS 120, requires that each rim and single piece wheel disc shall be marked with the information specified in that section. Paragraph S5.2(e) requires that the day, month, and year of manufacture or the month of manufacture shall be expressed on the rim in numerals.

Proposal

By notice of proposed rulemaking (NPRM) dated September 3, 1993 (58 FR 46938), NHTSA proposed to amend paragraph S5.2(e) to permit the use of symbols to express the date of manufacture of wheel rims. The proposal was issued in response to a petition submitted by Alloy Wheels International, Ltd. (AWI). In its petition, AWI suggested that NHTSA permit the use of a symbol resembling a clock face to express the date of manufacture of wheel rims. The symbol, approximately 19 millimeters (3/4 inch) in diameter, is divided into 12 sections corresponding to the hour segments of a clock. Each segment represents a month of the year, commencing with the segment between 12 and 1 o'clock representing January, the segment between 1 and 2 o'clock representing February, and so on concluding with the segment between 11 o'clock and 12 o'clock representing December. The month of manufacture is shown by a dot in the middle of the appropriate clock segment. The year is indicated by two numbers in the center of the symbol, such as "94" for "1994," and the day, if any, appears under the heading "DAY."

After reviewing the petition, the agency proposed the amendment suggested in the petition. The agency was concerned, however, that if adoption of the proposal resulted in a proliferation of symbols used by manufacturers, it might be difficult for the agency and consumers to decipher the meaning of some of them. Accordingly, the agency further proposed in the NPRM that prior to any manufacturer's use of a symbol to show the date of manufacture of a wheel rim, that manufacturer must notify NHTSA in writing of the symbol it intends to use. Such notification would be required to be submitted to NHTSA not less than 60 days before the symbol is first used. The notification would describe the symbol to be used, how it expressed the date of manufacture, specify where the symbol would appear on the rim, and include an actual-size depiction of the symbol. This one-time notification would also include the name and address of each manufacturer utilizing the symbol in question and the name and address of the trademark owner of the symbol, if any. Although such notifications would be placed in NHTSA's public docket, manufacturers utilizing the symbols would be required to provide the date code information to any person upon request.

Public Comment

Chrysler Corporation (Chrysler) submitted the only comment in response to the NPRM. Chrysler supported the proposed amendment because it would allow manufacturers of wheel rims greater flexibility in meeting the requirements of the standard. Chrysler believed, however, that manufacturers should not be required to notify NHTSA in advance of their use of symbols, stating that doing so would be a burden to such manufacturers.

Agency Decision

After considering the single comment on the NPRM, NHTSA has decided to adopt the amendments proposed in the NPRM as proposed. With respect to the notification requirement, the agency appreciates that it may cause a slight administrative burden on manufacturers. NHTSA believes, however, that the notification requirement is the simplest and most effective way to ensure that the agency and members of the public are able to understand and distinguish between the potential plethora of symbols that may be used. Similarly, NHTSA must be able to readily ascertain the date of manufacture of rims to identify production runs in the event of defects or noncompliances. Thus, any burden on manufacturers in preparing a one-time letter, in no prescribed format, notifying NHTSA of the symbols they intend to use on their rims should be negligible. By contrast, this information should be of considerable value to NHTSA and the public.

Section 103(c) of the National Traffic and Motor Vehicle Safety Act (Safety Act), 15 U.S.C. at 1392(c), requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since the amendments effected by this final rule merely provide wheel rim manufacturers an option, and thus greater flexibility, in meeting the requirements of FMVSS No. 120, NHTSA believes that the public interest would be served by not delaying the introduction of this alternative method of wheel rim labeling. Accordingly, the agency has determined that there is good cause to establish an effective date 30 days after publication of this final rule.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under E.O. 12866. NHTSA has considered the impact of this rulemaking action under DOT's regulatory policies and procedures and has determined it to be not "significant." As discussed above, this rulemaking action simply provides wheel rim manufacturers with the option of displaying the date of manufacture of their rims by means of a symbol rather than numerically, should they wish to do so. The additional costs to manufacturers will be minuscule, if any, since they are already required to display the manufacturing dates of their wheel rims in any case. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that the amendments promulgated by this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that few, if any, wheel rim manufacturers qualify as small businesses. Further, since no additional costs or price changes should be associated with this action, small businesses, small organizations and small government entities will not be affected in their respective capacities as purchasers of new vehicles and/or new wheels and rims.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act and has determined that implementation of this action will have no significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have any retroactive effect. Under section 103(d) of the Safety Act, 15 U.S.C. 1392(d), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Safety Act, 15 U.S.C. 1394, sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

The provisions in this final rule requiring manufacturers to notify NHTSA in writing of the symbols they propose to use to mark the date of manufacture of the rims they produce are considered to be information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for 49 CFR 571.120 have been submitted to and approved by OMB pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). This collection of information has been assigned OMB control number 2127–0503, Consolidated Labeling Requirements for Motor Vehicle Tires and Rims, and has been approved for use through December 31, 1995.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 will continue to read as follows:

Authority: 15 U.S.C. 1392; 1401; 1403; 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.120 is amended by revising S5.2(e) to read as follows:

§ 571.120 Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars.

* * * * *

S5.2 * * *

(e) The month, day and year or the month and year of manufacture, expressed either numerically or by use of a symbol, at the option of the manufacturer. For example:

"September 4, 1976" may be expressed numerically as:
90476, 904, or 76
76 904

"September 1976" may be expressed as:
976, 9, or 76
76 9

(1) Any manufacturer that elects to express the date of manufacture by means of a symbol shall notify NHTSA in writing, in duplicate, of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or single piece wheel disc, including dimensional specifications, and where the symbol will be located on the rim or single piece wheel disc. The notification shall be received by NHTSA at least 60 calendar days prior to first use of the symbol. The notification shall be mailed to the Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. All information provided to this agency under this paragraph will be placed in the public docket.

(2) Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

* * * * *

Issued on: May 11, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–11917 Filed 5–16–94; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 59, No. 94
Tuesday, May 17, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 94-8]

RIN 2125-AD31

Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to amend its regulation on utilities. The proposed amendments would raise the upper limit for FHWA forgoing preaward review and/or approval of consultant contracts for preliminary engineering from $10,000 to $25,000 and would increase the ceiling for lump sum agreements from $25,000 to $100,000. They would clarify the methodology to be used to compute indirect or overhead rates and would require utilities to submit final billings within 180 calendar days following completion of the work. They would bring the definition of "clear zone" into conformance with the American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide." They would incorporate an amendment conforming the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The FHWA proposes these changes to conform the utilities regulations to more recent laws, regulations, or guidance and to provide the State highway agencies clarification and more flexibility in implementing them.

DATES: Written comments are due on or before July 18, 1994.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Federal Highway Administration, Office of Chief Counsel, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Jerry L. Poston, Office of Engineering, 202-366-0450, or Wilbert Baccus, Office of the Chief Counsel, 202-366-0780, FHWA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Present FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found in title 23, Code of Federal Regulations, part 645 (23 CFR part 645). Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities. Part 645 was revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Two significant changes have occurred since then, on February 2 and July 1, 1988, when amendments to the regulation were published in the **Federal Register** at 53 FR 2829 and 53 FR 24932. The February 2 amendment provided that each State must decide, as part of its utility relocation plan, whether to allow longitudinal utility installations within the access control limits of freeways and if allowed under what circumstances. The July 1 amendment clarified that costs incurred by highway agencies in implementing projects solely for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation. The FHWA proposes to amend these regulations in the following manner and for the reasons indicated below.

In § 645.109, paragraph (b) would be amended to increase the ceiling from $10,000 to $25,000 for FHWA approval of consultant contracts for preliminary engineering and related work. This would allow the FHWA to forgo pre-award review and/or approval of proposed consultant contracts which are not expected to exceed $25,000. The proposed amendment would increase the number of consultant contracts that could be advanced without prior FHWA approval and would conform § 645.109 to 23 CFR part 172, Administration of Engineering and Design Related Service Contracts, as revised on April 30, 1991.

In § 645.113, paragraph (f) would be amended to increase the ceiling from $25,000 to $100,000 for using the lump sum payment arrangement for reimbursement for utility adjustments on Federal-aid and direct Federal highway projects. The proposed amendment would provide the States greater flexibility in utilizing the lump sum payment arrangement. The purpose of allowing lump sum agreements in lieu of agreements based on an accounting of actual costs is to reduce the administrative burden associated with utility relocation projects. Under the lump sum process, cost accounting is easier, project billings are simplified, and a final audit of detailed cost records is not required. Final project costs are typically quite close to the costs estimated for small, routine projects. The FHWA believes that the small degree of accuracy that might be realized if more detailed cost accounting methods were followed does not justify the extra cost involved in carrying out detailed audits. This revision would increase the number of utility relocations potentially eligible for lump sum payment, would anticipate future needs, and would respond, in part, to the fact that since the $25,000 limit was established in 1983, inflation has reduced the number and limited the scope of projects eligible for lump sum payments.

In § 645.117, paragraph (d)(1) would be amended to clarify the methodology to be used for computing indirect overhead rates. The definition of indirect costs, and what may or may not be included, is set forth in 48 CFR part 31, Contract Cost Principles and Procedures. Part 31 is referenced in 49 CFR part 18, the common rule for State and local government program application to "for-profit" organizations. However, to avoid any misunderstandings and to assure consistency with the common rule, a reference to 48 CFR 31 will be placed in title 23. Section 645.117 would be further amended by revising paragraph (i)(2) to require utilities to submit final billings within 180 calendar days following completion of the work, otherwise previous payments to utilities may be considered final and projects may be closed out. This change would assist highway agencies in their efforts to timely obtain final billings from the utilities. Some utility bills are received years after the work is completed, thus delaying audit activity and project closure. Billings received from utilities after 180 calendar days following completion of work could be paid at the discretion of the highway agency.

Section 645.207 would be amended to change the term "clear recovery area" to "clear zone" and to revise the definition of clear zone. In § 645.209, paragraph (b) would be amended to change the term "clear recovery area" to "clear zone." These changes would provide consistency with AASHTO's "Roadside Design Guide,"[1] a 1989 document which should be used as a guide for establishing clear zones for various types of highways and operating conditions. The term "clear recovery area" originated in 1985 and, though worded somewhat differently, meant essentially the same as the term "clear zone." These terms were often used interchangeably. The "Roadside Design Guide," however, uses the term "clear zone" exclusively. Hence, to avoid confusion and to comply with the predominant guidance document, the term "clear zone" is proposed to be incorporated into the utility regulations.

In § 645.215, paragraph (a) would be amended to change the term "Federal-aid system" to "Federal-aid highway." This revision is in accordance with a conforming amendment in section 1016(f)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) which changed the term "Federal-aid system" in 23 U.S.C. 109(l) to "Federal-aid highway."

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposed amendments would simply make minor changes to update the utilities regulations to conform to recent laws, regulations, or guidance and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the proposed amendments would only clarify or simplify procedures presently being used by State highway agencies and utilities. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This is because the proposed amendments would only clarify or simplify procedures used by State highway agencies and utilities in accordance with existing laws, regulations, or guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 645

Grant Programs—transportation, Highways and roads, Utilities—relocations, adjustment, reimbursement.

Issued on: May 9, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 645 as set forth below:

PART 645—UTILITIES

1. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§ 645.109 [Amended]

2. In § 645.109, paragraph (b) is amended by removing the figure "$10,000" wherever it appears and adding in its place the figure "$25,000".

§ 645.113 [Amended]

3. In § 645.113, paragraph (f) is amended by removing the figure "$25,000" wherever it appears and adding in its place the figure "$100,000".

4. In § 645.117, paragraphs (d)(1) and (i)(2) are revised to read as follows:

§ 645.117 Cost development and reimbursement.

* * * * *

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be

[1] The "Roadside Design Guide" is incorporated by reference at 23 CFR 625.5(a)(3). It is available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street, NW., Washington, DC 20001. Also, it is available for inspection as provided in 49 CFR part 7, appendix D.

eligible for Federal reimbursement, reasonable, actually incurred by the utility, and consistent with the provisions of 48 CFR part 31.

* * * * *

(i) *Billings.* * * * (2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within 180 calendar days following completion of the work, otherwise previous payments to the utility may be considered final. The final billing to the FHWA shall include a certification by the SHA that the work is complete, acceptable, and in accordance with the terms of the agreement.

* * * * *

§ 645.207 [Amended]

5. Section 645.207 is amended by removing the paragraph designations from all definitions, by placing the definitions in alphabetical order, by removing the definition of "clear recovery area," by revising the first sentence in the definition for "clear roadside policy" and by adding the definition "clear zone" to read as follows:

§ 645.207 Definitions.

* * * * *

Clear roadside policy—that policy employed by a highway agency to provide a clear zone in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. * * *

Clear zone—the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide," 1989, should be used as a guide for establishing clear zones for various types of highways and operating conditions. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

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§ 645.209 [Amended]

6. In § 645.209, paragraph (b) is amended by removing the words "clear recovery" in the second sentence and removing the words "clear recovery area" in the third sentence and adding in their place the words "clear zone".

§ 645.215 [Amended]

7. In § 645.215, paragraph (a), the fifth sentence is amended by removing the words "of the Federal-aid highway system" and adding in their place the words "of Federal-aid highways".

[FR Doc. 94-11845 Filed 5-16-94; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-27-94]

RIN 1545-AS70

Subchapter K Anti-Abuse Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a proposed regulation providing an anti-abuse rule under subchapter K of the Internal Revenue Code of 1986 (Code). The rule authorizes the Commissioner of Internal Revenue, in certain circumstances, to recast a transaction involving the use of a partnership to reflect the underlying economic arrangement under subchapter K or to prevent the use of a partnership to circumvent the intended purpose of a provision of the Code. The proposed regulation affects partnerships and their partners and is necessary to provide guidance needed to comply with the applicable tax law.

DATES: Written comments must be received by July 1, 1994. Outlines of topics to be discussed at the public hearing scheduled for Monday, July 25, 1994, at 10 a.m. must be received by Tuesday, July 5, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS-27-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS-27-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mary A. Berman or D. Lindsay Russell, (202) 622-3050; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to add § 1.701-2 to the Income Tax Regulations (26 CFR part 1) to provide for an anti-abuse rule under subchapter K of the Code. This rule is proposed to apply for all purposes of the Code (e.g., income, estate, gift, generation-skipping, and excise tax).

Subchapter K was enacted to permit businesses organized for joint profit to be conducted with "simplicity, flexibility, and equity as between the partners." S. Rep. No. 1622, 83d Cong., 2d Sess. 89 (1954); H.R. Rep. No. 1337, 83d Cong., 2d Sess. 65 (1954). It was not intended, however, that the provisions of subchapter K be used for tax avoidance purposes. For example, in enacting subchapter K, Congress indicated that aggregate, rather than entity, concepts should be applied if such concepts are more appropriate in applying other provisions of the Code. H.R. Conf. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954). Similarly, in later amending the rules relating to special allocations, Congress sought to "prevent the use of special allocations for tax avoidance purposes, while allowing their use for bona fide business purposes." S. Rep. No. 938, 94th Cong., 2d Sess. 100 (1976). Thus, the intent of the partnership provisions in subchapter K is to permit taxpayers to conduct business for joint economic profit through a flexible arrangement that accurately reflects the partners' economic agreement without incurring an entity-level tax. These provisions are not intended, however, to permit taxpayers either to structure transactions using partnerships to achieve tax results that are inconsistent with the underlying economic arrangements of the parties or the substance of the transactions, or to use the existence of the partnerships to avoid the purposes of other provisions of the Code.