

impact of the AD on U.S. operators is estimated to be \$1,840,352.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-3876 (45 FR 54014, August 14, 1980) and by adding a new airworthiness directive (AD), Amendment 39-12941, to read as follows:

2002-22-14 Bell Helicopter Textron, Inc.:
Amendment 39-12941. Docket No. 2001-SW-42-AD. Supersedes AD 80-17-09, Amendment 39-3876, Docket No. 80-ASW-25.

Applicability: Model 204B, 205A, 205A-1, 205B, 212, 214B, and 214B-1 helicopters, with main rotor tension-torsion (TT) strap, part number (P/N) 204-012-122-1, -5, or 214-010-179-1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove and replace any TT strap with 1,200 or more hours time-in-service (TIS) or 24 or more months since initial installation on any helicopter, whichever occurs first.

(b) This AD revises the Limitations section of the maintenance manual by establishing a life limit for the TT straps, P/N 204-012-122-1, -5, or 214-010-179-1, of 1200 hours TIS or 24 months since initial installation on any helicopter, whichever occurs first.

(c) Special flight permits will not be issued.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) This amendment becomes effective on December 13, 2002.

Issued in Fort Worth, Texas, on October 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02-28411 Filed 11-7-02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 122, 123, 127, 141, 142 and 178

[T.D. 02-65]

RIN 1515-AC57

General Order Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This amendment of the Customs Regulations is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are made to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Sushil, Office of Field Operations, 202-927-0564.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103-182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

Some of these amendments affected the treatment of general order merchandise. General order merchandise is merchandise that is required to be deposited in a bonded warehouse at the risk and expense of the consignee because it is not timely entered as provided by law or regulation, entry for it is incomplete because estimated duties, fees or interest has not been paid, entry cannot be made for it due to lack of proper documentation or other cause, or because it is not correctly or legally invoiced. See 19 U.S.C. 1490(a). Customs has denominated the type of bonded warehouse in which this type of merchandise must be deposited as a general order warehouse. See 19 CFR 127.1.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the

owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse is then responsible for arranging for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98-74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unloading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by a document published in the **Federal Register** (65 FR 42893) on July 12, 2000, Customs proposed that a new class of bonded warehouse, a class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1).

It was further proposed that a class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), could likewise be used for the deposit of general order merchandise, but only if there were no class 11 warehouse otherwise available to receive the merchandise, and provided the class 3, 4, or 5 warehouse had also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2).

To this end, § 19.1 was proposed to be amended to include provisions for general order warehouses. Matters relating to inventory control and minimum space requirements for general order warehouses were also addressed in the proposed rule, in §§ 19.2 and 19.12, respectively.

Additionally, an amendment to § 19.2(f) was proposed to allow the port director to require a business entity seeking approval to establish a Customs bonded warehouse to submit fingerprints, as part of the application process, for all its employees, as opposed to only those of all officers and managing officials of the business entity, as is currently the case; this proposed change would pertain to an application by a business entity to establish any Customs bonded warehouse, including a general order warehouse.

Furthermore, the proposed rule put forth amendments to §§ 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), that would make it the responsibility of the warehouse proprietor to prepare a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covered the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise had been transferred by a Customs-authorized permit to transfer or in-bond entry). This was intended to recognize and specifically implement the existing requirement described above that the warehouse proprietor be responsible for the transportation and

storage in general order status of unentered merchandise following due notification by the arriving carrier or other bonded carrier of the presence of such merchandise.

Moreover, §§ 4.37, 122.50 and 123.10 were to be amended to provide that if a carrier or other party to whom the original carrier had properly transferred unclaimed and abandoned goods refused to relinquish custody over the goods to a general order warehouse proprietor, the carrier or other party would be liable for liquidated damages under the international carrier or custodial bond, as applicable; and §§ 4.37, 122.50 and 123.10 were to be further amended to provide that in cases where the warehouse proprietor was unable to accept goods into general order because the goods were required to be exported or destroyed, or for other good cause, the carrier or other party to whom the original carrier had properly transferred the goods would be responsible under bond for exporting or destroying the goods, as necessary. It was further proposed that § 127.13, Customs Regulations (19 CFR 127.13), be changed consistent with §§ 4.37, 122.50 and 123.10.

Also, the proposed rule would revise § 127.14 to require that the warehouse proprietor assume the responsibility and expense for the destruction of general order merchandise, in the event that such destruction were found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)); however, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, under the proposed rule, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made by section 659 of the Mod Act to 19 U.S.C. 1491 concerning the provision that under certain conditions title to unclaimed and abandoned merchandise could vest in the United States, as an alternative to the Government having to sell such merchandise at public auction.

Time Limit Within Which To Make Entry; Conforming Changes

Finally, in conformance with the changes already made under T.D. 98-74 to §§ 4.37, 122.50, and 123.10, as

discussed above, the proposed rule would similarly revise §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

Discussion of Comments

Six commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, and Customs response to each issue, is set forth below.

It is initially noted, however, that one commenter made certain suggestions during the proposed rulemaking comment period that were outside the scope of the notice, in particular: in connection with the unentered merchandise described in §§ 4.37(b), 122.50(b) and 123.10(b), to require that a carrier notify a general order warehouse of the presence of such unentered merchandise within the 15-day period, as opposed to the 20-day period, described in those sections; and to add a requirement in part 127 that carriers provide all information to the warehouse that they have on the consignee of unclaimed merchandise in order to facilitate the preparation of notices of sale for the merchandise. Such recommendations which, while related, fell outside the scope of the original notice of proposed rulemaking, are not addressed in this document. If found warranted, they would need to be the subject of another rulemaking document.

General Order Warehouses; Part 19

Comment

One commenter objected to the provision in proposed § 19.1(c) requiring that an available class 11 (General Order) warehouse be used to handle general order merchandise, in preference to another available general order (G.O.) warehouse of class 3, 4, or 5. The commenter asserted that a mandatory requirement to this effect would be unfair, would competitively disadvantage G.O. warehouses of class 3, 4 or 5, and would eliminate choice for the importing public in this area.

Customs Response

Customs agrees. Section 19.1(c) is revised to eliminate any requirement to use a class 11 warehouse over an existing class 3, 4 or 5 warehouse that has been approved to handle general order merchandise. Carriers and the importing community should, and will,

continue to have a choice as to the particular G.O. warehouse to which their shipments may be sent.

Comment

One commenter suggested that class 11 G.O. warehouses be allowed to rent or lease additional space for the storage of G.O. merchandise.

Customs Response

Section 19.1(c) already provides for this. Any warehouse eligible to receive general order merchandise (a class 3, 4, 5, or 11 warehouse) may rent or lease suitable premises for the storage of such merchandise, if there is no space at the warehouse otherwise available.

Comment

Several commenters requested that Customs elaborate on the provision in proposed § 19.2(d) regarding minimum space requirements and other criteria for becoming a G.O. facility. In particular, one commenter asked that Customs impose regulatory limits on the number of G.O. warehouses that could operate in a port and, furthermore, that Customs specify in its regulations those parties that could not qualify to operate a G.O. warehouse.

Customs Response

Customs does not believe that further elaboration upon these matters in the regulations is warranted. Both the number of facilities and the space required for G.O. merchandise will vary from port to port; therefore no one standard can or should be applied.

Comment

One commenter objected to proposed § 19.2(f) which provided that the port director "may" require a business entity seeking to establish a Customs bonded warehouse to submit fingerprints from all its employees, as part of the application process, instead of limiting the submission of fingerprints to those of all officers and managing officials of the business entity, as is currently the case. On the other hand, several commenters wanted the word "may" in proposed § 19.2(f) replaced with "should".

Customs Response

Customs disagrees with both views. The port director should have the discretion to determine the extent of scrutiny that is called for in given circumstances with respect to a business entity that is applying for approval to establish a Customs bonded warehouse, including the ability to require fingerprints from all employees of the business entity.

Comment

In proposed § 19.12(a), one commenter was concerned about the expense of an automated inventory system that would be a requirement for a general order warehouse. The commenter requested that small warehouses be allowed to continue with a manual system. In the alternative, it was suggested that Customs should bear some of the costs associated with an automated inventory system.

Customs Response

Customs has concluded that the requirement for an automated inventory system should apply to all general order warehouses. Most warehouses already have an automated system that could likewise be extended to include G.O. merchandise; against this backdrop, automation should not impose an unreasonable cost. In addition, it is noted that in § 19.12(a) existing G.O. warehouses will be given a phase-in period of 2 years within which to automate their recordkeeping. This time frame should be adequate and provide ample time especially for smaller operators to defray some of the costs that they incur with automation. In this regard, Customs will not be involved in the cost, support, or maintenance of an automated inventory system. It is properly the responsibility of the warehouse proprietor to choose an automated system that best suits the particular needs of the warehouse and that fulfills Customs regulatory requirements.

Comment

In proposed § 19.12(a), several commenters thought that the "phase-in" period for automation was overly long.

Customs Response

Customs finds that this two-year phase-in allowance is reasonable and prudent. As already observed, it will afford some of the smaller G.O. warehouses needed time to acquire and install an automated record system and to defray their cost in so doing.

Transferring Unentered Merchandise to a G.O. Warehouse; Sections 4.37, 122.50 and 123.10

Comment

One commenter asked that an explicit statement be included in §§ 4.37(b), 122.50(b) and 123.10(b) limiting to 15 calendar days the period during which unentered merchandise may remain in the custody of the arriving carrier or other bonded carrier to whom such merchandise was properly transferred.

Customs Response

Customs believes that this 15 calendar-day limitation is already clearly set forth in the cited regulatory provisions and that no change is needed.

Comment

Two commenters objected to the provision in proposed §§ 4.37(c), 19.9(a), 122.50(c) and 123.10(c) making it the responsibility of the G.O. warehouse proprietor to prepare the transfer documentation (CF 6043 or other approved form or an electronic equivalent) to cover the proprietor's receipt of unentered merchandise and its transport to the G.O. warehouse from the custody of the arriving carrier (or other bonded carrier).

Customs Response

Customs agrees. The preparation of the transfer documentation (CF 6043 or other approved form or electronic equivalent) should remain with the bonded carrier (or other party to which the bonded carrier has properly transferred the merchandise). Customs acknowledges that this is the existing procedure in most ports. As a practical matter, the G.O. warehouse proprietor does not have sufficient information as to the identity and quantity of the unentered cargo to expeditiously and knowledgeably prepare such transfer documentation prior to acceptance of the goods. Thus, shifting the responsibility for preparation of the delivery ticket from the arriving carrier (or other bonded carrier) to the warehouse proprietor would unnecessarily delay the transfer of unentered merchandise to general order. Sections 4.37(c), 19.9(a), 122.50(c) and 123.10(c) are changed accordingly.

Comment

Two commenters suggested that the phrase "Customs-approved bonded warehouse" appearing in proposed §§ 4.37(d), 122.50(d), and 123.10(d) should be replaced by "Customs-approved bonded General Order warehouse".

Customs Response

Customs agrees. Sections 4.37(d), 122.50(d), and 123.10(d) are changed accordingly.

Comment

One commenter requested clarification as to the difference between the liquidated damages provision in proposed § 4.37(d) and the penalties authorized under § 4.37(a). This commenter also requested that the phrase "carrier or other party may be

liable for* * *" in proposed § 4.37(d) be changed to "the carrier shall, as determined by the port director, be liable for* * *".

Customs Response

The penalty contained in § 4.37(a) (also see §§ 122.50(a) and 123.10(a)) may be assessed against the master or owner of an arriving vessel, or the agent of the master or owner, for failing to timely notify Customs of the presence of unclaimed merchandise that has been unladen from the vessel. The penalty is up to \$1,000 per bill of lading; however, if the value of the unclaimed merchandise on the bill is less than \$1,000, the penalty will simply be equal to the value of such merchandise.

Liquidated damages in § 4.37(d) (also see §§ 122.50(d) and 123.10(d)) may be assessed against an arriving carrier or other party to whom the arriving carrier has properly transferred the unentered, unreleased merchandise if the carrier or other party fails to timely relinquish custody over the merchandise to a warehouse authorized to receive it. To this end, § 4.37(d) is changed to make clear that liquidated damages would only apply if the carrier fails to "timely" relinquish custody over the subject merchandise. Sections 122.50(d) and 123.10(d) are likewise changed. However, Customs finds that the change suggested by the commenter is not needed. If applicable, liquidated damages would be assessed under the international carrier bond of the arriving carrier or the custodial bond of the other party, as appropriate.

Comment

With respect to proposed §§ 4.37(e), 122.50(e) and 123.10(e), several commenters wanted to give G.O. warehouse proprietors the right to refuse any shipments that they did not want to accept. One commenter wanted a right to return merchandise to the carrier, and asked that a provision be added to the regulations that the carrier must accept the return of such merchandise, if the merchandise was sent to the warehouse improperly because it was hazardous material or was otherwise required to be exported or destroyed.

Customs Response

A bonded warehouse proprietor may not lawfully decline to accept general order merchandise that the warehouse is eligible to receive and is capable of storing. The underlying general order statute (19 U.S.C. 1490(a)) does not envision an unfettered right on the part of the warehouse proprietor to refuse general order goods. However, as

already stated in §§ 4.37(e), 122.50(e) and 123.10(e), if the port director finds that the warehouse proprietor cannot accept goods because they are required by law to be exported or destroyed, or for other good cause, such goods will remain in the custody of the arriving carrier or other bonded carrier for purposes of export or destruction. It is incumbent upon the warehouse proprietor to take reasonable steps to inquire about and ascertain the nature and condition of the goods before accepting them. Once goods are accepted into the custody of the warehouse proprietor, the appropriate disposition of the goods would at that point accordingly become the responsibility of the proprietor.

Title to Unclaimed Merchandise Vesting in Government; Part 127*Comment*

Several commenters objected to the provisions in proposed subpart E of part 127 regarding unclaimed merchandise the title to which vests in the U.S. Government. In particular, they wanted to be compensated by the Government for their storage and transportation charges on cargo to which the Government decides to take title and retain for its own use. These commenters contended that not being reimbursed for any expenses they incurred for the six-month G.O. period would impose a great financial burden upon them.

Customs Response

Customs believes that the commenters' concerns are unfounded. It is true that under the conditions specified in 19 U.S.C. 1491(b), the title to unclaimed merchandise may vest in the U.S. Government free and clear of any liens or encumbrances. Yet, while the Government may retain title to unclaimed merchandise free and clear of any liens or encumbrances, all transfer and storage charges or expenses accruing on the merchandise are, nevertheless, required to be paid by the Federal, State or local government agency that receives the merchandise, pursuant to 19 U.S.C. 1491(c). Such transfer and storage charges would include those accruing with respect to the merchandise while subject to general order. Section 127.42(b) is revised to make this clear.

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the

modifications discussed above and the additional changes discussed below should be adopted as a final rule.

Additional Changes

Section 19.1(b) is amended to provide that a class 11 (general order) warehouse may be designated as a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

Also, § 127.21 is changed to grant port directors the authority to defer sales of unclaimed and abandoned (general order) merchandise. Currently, § 127.21 requires that unclaimed and abandoned merchandise be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment on selling it is authorized by the Commissioner of Customs. Customs has decided that this deferral authority be at the port level.

Furthermore, § 127.28(a) is changed so as to more clearly emphasize the necessity that drugs, seeds, plants, nursery stock and other articles, when so required, must be inspected by a representative of the Department of Agriculture to determine whether the articles comply with the law and regulations administered by that Department, especially given that, where found to be in noncompliance, such articles would need to be immediately destroyed.

Finally, Customs has decided that § 127.41(a) should be revised to state that the port director may provide for the vesting of title to unclaimed and abandoned merchandise in the United States, with the concurrence of the Assistant Commissioner, Office of Field Operations, rather than with the concurrence of the Commissioner of Customs, as initially proposed.

Regulatory Flexibility Act and Executive Order 12866

The amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Nor do they meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this final rule document had in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515-0220 (Notification regarding imported merchandise or baggage for which entry has not been made). This document restates these collections of information without material change.

The remaining collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515-0224. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This latter collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to: Expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers. The estimated average annual burden associated with this information collection is 33 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is

appropriately revised to reflect this additional information collection.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 19, 122, 123, 127, 141, 142 and 178, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141, 142 and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.
* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;
* * * * *

2. Section 4.37 is amended as follows:
a. By adding a sentence after the third sentence in paragraph (c),

b. By redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and

c. By adding two sentences at the end of redesignated paragraph (e).

The additions and revisions read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In

this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;
* * * * *

2. Section 19.1 is amended as follows:

a. By adding a heading to paragraph (a),

b. By revising paragraph (a)(1),

c. By reserving paragraph (a)(10) and adding a new paragraph (a)(11),

d. By revising paragraph (b), and

e. By adding a new paragraph (c).

The additions and revisions read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under "general order."

* * * * *

(11) *Class 11.* Bonded warehouses, known as "general order warehouses," established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order.* General order merchandise as described in § 127.1 of this chapter may be stored and disposed of in a class 11 warehouse or a warehouse of class 3, 4, or 5, provided the class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2. So far as such warehouses

are used for the purpose of handling general order goods, they will also be considered general order (class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. Section 19.2 is amended by adding a new paragraph (d) and by revising the second sentence of paragraph (f) to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

* * * * *

4. Section 19.9 is amended by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A

joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

* * * * *

5. Section 19.12 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.50 is amended as follows:

- a. By revising the heading,
- b. By adding a sentence after the third sentence in paragraph (c),
- c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and
- d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 122.50 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the

merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

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

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.10 is amended as follows:

- a. By revising the heading,
- b. By adding a sentence after the third sentence in paragraph (c),
- c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and
- d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 is revised, and specific sectional authority citations are added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. Part 127 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11 through 127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. Section 127.13 is amended by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A class 11 bonded warehouse or warehouse of class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. Section 127.14 is amended by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.*—(1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in

accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.*—(i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (see § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. Section 127.21 is amended by revising its first sentence to read as follows:

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. * * *

6. Section 127.28 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. * * *

* * * * *

7. Part 127 is amended by adding a new subpart E to read as follows:

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

Sec.

127.41 Government title to unclaimed and abandoned merchandise.

127.42 Disposition of merchandise owned by Government.

127.43 Petition of party for surplus proceeds had merchandise been sold.

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

- (1) Importer, if known;
- (2) Consignee, if name and address can be ascertained;
- (3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and
- (4) Any other known interested parties.

(c) *Appraisal of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported,

as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see § 127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisal of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.5 is revised to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.2 is amended by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

* * * * *

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 adding new listings in the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB numbers.

19 CFR section	Description	OMB control No.
* * * * *		
§ 4.37(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		
§ 19.9(a)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		
§ 122.50(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		
§ 123.10(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		

Approved: November 4, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02-28346 Filed 11-7-02; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The United States International Trade Commission (Commission) hereby amends its rules of practice and procedure (rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only. The Commission also amends its rules of practice and procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission.

DATES: The effective date of these amendments is December 9, 2002.

FOR FURTHER INFORMATION CONTACT:

Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202-205-3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the Commission published a notice of proposed rulemaking (NOPR) in the **Federal Register**, 67 FR 20709, April 26, 2002. In the NOPR, the Commission proposed amending its rules of practice and procedure to (a) permit persons the option of filing certain documents electronically instead of just in paper form; (b) allow electronic service of documents in limited circumstances; and (c) require persons to complete and submit a standard cover sheet, whether filing electronically or in paper form. In its NOPR, the Commission invited

public comment on its proposed rule amendments and the EDIS-II cover sheet (cover sheet) for use in filing documents in the Commission's Electronic Document Information System (EDIS-II). The Commission received a total of three sets of comments from the ITC Trial Lawyers Association (ITCTLA) and two law firms. The Commission carefully considered all comments that it received. The Commission's response to those comments that relate to the rule amendments is provided below in a section-by-section analysis. Since the NOPR was published, the Office of Management and Budget (OMB) has determined that the cover sheet does not require OMB approval because of the minimal paperwork burden on the public; nevertheless, the Commission has summarized below comments to the cover sheet and its response thereto. The Commission appreciates the time and effort the commenters took to present their views, and believes that the comments have improved the amendments and the cover sheet. The Commission is also publishing a notice containing the Handbook on Electronic Filing Procedures (Handbook) referenced in amended § 201.8 of the rules, which includes information regarding registration for electronic filing and the list of documents that may be filed electronically. Please review the Handbook in its entirety prior to registering for electronic filing.

Regulatory Analysis

The Commission has determined that these amended rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 13, 2002) are inapplicable to this rulemaking because it is not one for which a NOPR is required under 5 U.S.C. 553(b) of the APA or any other statute. Although the Commission published a NOPR, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). These amended rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999). No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the amended rules will not result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. The amended rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Analysis of the Regulations

Section 201.8

The Commission has amended § 201.8 by adding paragraphs 201.8(f) and (g). Section 201.8(f) provides that persons may file certain documents electronically at the Commission's Internet website without violating the relevant provisions of the rules that govern paper filing of documents. The Commission did not receive any specific comments with respect to § 201.8(f). Section 201.8(g) requires that persons filing documents either in paper form or electronically must complete a cover sheet to be submitted to the Commission along with their filings. The law firm of Adduci, Mastriani & Schaumberg, L.L.P. proposed amending § 201.8 to state that filings without a cover sheet will be accepted, and that cover sheets may be submitted the following business day. The Commission has determined to retain the requirement that filers must complete and submit a cover sheet with their filings, whether the filings are in electronic or paper form, because the information in the cover sheet is required for EDIS-II to docket filings. The Commission has revised § 201.8(g) to require parties submitting paper filings to fill-out the cover sheet on-line and print it out for submission to the Office of the Secretary with the paper filing. Persons filing documents electronically are required to complete and submit the cover sheet on-line with the electronic filing. This cover sheet requirement is to ensure accurate processing of filings.

Section 201.16

The Commission has amended § 201.16 by adding paragraph (e) to permit persons the option of serving documents on other parties electronically, if the Secretary consents to such electronic service. However, electronic service is not permitted in