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FDC 5/1578/CMX/ FI/P Houghton County Memorial, Hancock, MI. NDB or GPS RWY 31 AMDT 11...MSA from CM LOM 090-270 3400, 270-090 2700. This is NDB or GPS RWY 31 AMDT 11A.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

[T.D. 95-35]

RIN 1515-AB20

Petroleum Refineries in Foreign Trade Subzones

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act to make specific provision for petroleum refinery subzones.

EFFECTIVE DATE: These regulations are effective October 24, 1995.

FOR FURTHER INFORMATION CONTACT: For Legal aspects: Bill Rosoff, Chief, Entry Rulings Branch (202)482-7040. For Operational aspects: Louis Hryniw, Regulatory Audit (202)927-1100.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1992 (57 FR 35530), Customs published a document in the **Federal Register** proposing to amend the Customs Regulations to add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988

which amended the Foreign Trade Zones Act, 19 U.S.C. 81c(d), to make specific provision for petroleum refinery subzones.

Briefly, as stated in the August 10, 1992, notice of proposed rulemaking, the statutory amendment obviates the need to determine exactly when and where in the manufacturing process crude and other feedstocks become other products. In so doing, it permits refiners as well as Customs to assess the relative value of such multiple products at the end of the manufacturing period during which such products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to a given crude or other feedstocks introduced into production during the period, to the extent that such products were producible (could have been produced) therefrom in the quantities removed from the subzone.

As a result of extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice of proposed rulemaking, Customs published a significantly revised notice on March 4, 1994 (59 FR 10342) and solicited additional public comment on the revised proposed rule.

The following discussion includes a summary of the various comments received in response to the March 4, 1994, notice of proposed rulemaking, together with an explanation and analysis regarding the sections to be added, eliminated or further revised. The final rule as revised is thereafter set forth.

Discussion of Comments

Comment: Two commenters suggested deletion of proposed § 146.92(a)(1), (2) and (3) because it is already covered in proposed § 146.93.

Customs Response: Customs agrees and, therefore, these three subsections have been deleted.

Comment: Three commenters suggested that the definition in proposed § 146.92(b) be expanded to include products from natural gas production and blendstocks and, additionally, that the definition state that Customs may add other merchandise to this definition by way of a ruling.

Two commenters suggested the inclusion of "other hydrocarbon feedstocks, light olefins, and other aromatics and their derivatives" in this definition.

Customs Response: Regarding the suggestion that this definition may be modified by a ruling, Customs regulations may not be modified or changed by way of a ruling. Any changes to the regulations would have to follow regulatory procedures. It is not clear to Customs how natural gas production and blendstocks apply to producibility. Any change to T.D. 66-16 to include feedstocks or products not listed must include supporting records and a technical explanation of the change. Therefore, this suggestion has not been adopted.

Comment: One commenter suggested that the word "means" in proposed § 146.92(c) be changed to "is based on". Another commenter suggested deletion of "utilizing T.D. 66-16 (see § 146.92(h)), and" and insertion of "volumetric" between "any" and "loss".

Customs Response: The suggested change has been adopted with respect to addition of the word "volumetric" and § 146.92(c) has been reworded. Customs disagrees that the phrase "utilizing T.D. 66-16" should be deleted. The word "means" should be retained since this section defines terms for use in this subpart.

Comment: The suggestion was made that proposed § 146.92(d) be re-worded to read as follows:

Final product means any product that is produced in a petroleum refinery subzone from feedstock processed therein, and thereafter removed therefrom or consumed within the zone.

Two commenters suggested that the phrase "and or hydrocarbon product" be inserted after "product" and before "that". Another commenter suggested that the phrase "lost or destroyed in the subzone as provided in § 146.53(c)(1)(iv)" be inserted after "therefrom".

Customs Response: The first suggestion regarding the rewording of § 146.92(d) has been adopted. The use of attribution by records requires that the amounts removed or consumed actually be measured; such method is not acceptable to account for unmeasured losses. This suggestion has not been adopted. It is Customs position that 19 U.S.C. 81c(d) applies only to crude petroleum products and not to hydrocarbons in general. Therefore, this suggestion was not adopted.

Comment: Two commenters suggested that the words "or manufacturer" be inserted after "refiner" and that the words "production facility" be inserted after "refinery" in proposed § 146.92(e). One commenter suggested deletion of the phrase "for which * * * subzone" because attribution is addressed

elsewhere in the regulations. Another commenter recommended that the word "for" after "month" be deleted and replaced with "within".

Customs Response: Regarding the first suggestion, the purpose of these regulations is to implement 19 U.S.C. 81c(d). That statutory provision only applies to crude petroleum refineries in foreign trade zones. Therefore, there is no basis to extend these regulations to "production facilities." The suggestion to remove the reference to final products consumed or removed from the subzone has not been adopted since the statute provides an attribution formula to be used at specific subzones. The word "for" is shorter than "within" and there is no change in substance.

Comment: One commenter proposed addition of a definition of "Petroleum" to read as follows:

Petroleum means a feedstock listed on the top line of the tables set forth in T.D. 66-16 and includes any hydrocarbon feedstock produced from natural gas liquids or comprised of natural gas liquids.

Customs Response: Customs disagrees that such a definition is necessary and, therefore, has not included this definition in the final rule.

Comment: Two commenters recommended that the phrase "listed on the top line of the tables set forth in T.D. 66-16" be replaced with "as defined herein into final products as defined herein". One commenter suggested that the following phrase be added at the end of proposed § 146.92(f):

* * * and includes any facility that processes a hydrocarbon feedstock utilizing one or more of the units in the definition of a refinery operating unit.

Two other commenters advocated renaming this definition "Petroleum refinery or production facility" and then adding the following:

Production facility means a facility that primarily converts hydrocarbon feedstocks, light olefins, aromatics and their derivatives into primarily light olefin products such as ethylene or propylene or other products such as toluene, benzene, or derivatives of olefins and aromatic products such as cyclohexane, acrylates, alcohols, caprolactam, or other petrochemical products.

Customs Response: As previously stated, there is no authority to extend the application of 19 U.S.C. 81c(d) beyond a crude petroleum refinery.

Comment: Two commenters proposed deletion of "market" and "each month" from the definition in proposed § 146.92(g).

Customs Response: Customs disagrees with this suggestion. A refiner has the

option to use the market value of each product or a published standard value such as Platts.

Comment: Two commenters suggested addition of the phrase "is an inventory control" before the word "method" in proposed § 146.92(h) and replacement of the phrase "set forth in T.D. 66-16" with "as verified and adopted by the Secretary of the Treasury".

Customs Response: The suggested changes have not been adopted. Producibility is not an inventory control because it does not reflect actual feedstocks in inventory at any given time. It is a statutory method to account for import duties owed on privileged foreign feedstocks. The Industry Standards of Potential Production are set forth in T.D. 66-16 and, even if that Treasury Decision is modified in the future, the reference will always be to "T.D. 66-16 as modified by T.D.—".

Comment: Four commenters suggested replacement of the definition in proposed § 146.92(i) with the following language:

Relative value means a factor assigned to each final product attributed to the separation from a privileged foreign feedstock equal to the ratio of its "price of product" to the average "price of product" for all final products at the time of separation.

Customs Response: Customs disagrees with this suggestion because "relative value" is a dollar value assigned to products and not a factor. Therefore, the definition remains as proposed.

Comment: Two commenters suggested addition of "or production operating unit" to the title of § 146.92 and insertion of the following language in the definition:

Production operating unit means a unit in a production facility in which feedstock is processed such as a thermal cracking furnace or distillation tower.

Four commenters suggested deletion of proposed § 146.92(j) (definition of "Refinery operating unit") in its entirety. Alternatively, one commenter suggested the definition should read as "a facility within a refinery wherein feedstocks lose their unique physical identity or may undergo changes in physical characteristics". Another commenter agreed with the proposed definition but also suggested adding the words, "including, but not limited to, API gravity, distillation traits, chemical characteristics, etc." Yet another commenter proposed deletion of any reference to "operating unit" in this section and in proposed §§ 146.93(a) (1) and (4), 146.93(b), 146.94(a), and 146.96(a)(1).

Customs Response: Customs agrees with the position asserted by the

commenters that the manufacture and manipulation of feedstocks begins on admission to a refinery subzone because a refiner deliberately mixes various feedstocks on admission to achieve optimum characteristics for processing. For that reason, proposed § 146.92(j) is unnecessary and has been deleted.

Based on the assertion by refiners that the mixing occurs on admission, the admission of feedstock in nonprivileged status will be binding and a post-admission request for privileged status will be denied unless the refiner establishes that the feedstock was not manipulated or manufactured to effect a change in tariff classification. A new § 146.93(e) has been added to reflect this position.

Comment: Two commenters suggested revising proposed § 146.92(k) to read as follows:

Time of separation in the case of privileged foreign feedstock means the manufacturing period in which such feedstock is deemed to have been separated into two or more final feedstocks.

Customs Response: Customs disagrees with this suggestion since it merely adds words without changing the substance of the definition.

Comment: Three commenters proposed inclusion of the following language in proposed § 146.93(a) immediately following "Attribution" and before "(1) Producibility":

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery zone must be attributed to feedstock processed within said petroleum refinery zone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized inventory control methods set forth in this section. Records may be maintained on a weight or volume basis.

Two commenters suggested that the phrase "have been introduced into a refinery operating unit" in proposed § 146.93(a)(1) be replaced with "are eligible for attribution, as set forth in paragraph (b), of this section * * *". Another commenter proposed replacement of the same phrase with "are eligible for attribution, as set forth in paragraph (a)(4) of this section * * *". A third commenter recommended replacement of the same phrase with the words "are eligible for attribution * * *".

Two other commenters suggested the inclusion of the phrase "or production operating unit" after "refinery operating unit".

Customs Response: Because Customs accepts the assertions of refiners that

they begin to manipulate all feedstocks on admission to achieve an optimum set of characteristics for processing, Customs has modified § 146.93(a)(1) accordingly.

Comment: Two commenters recommended that “[i]n addition, an operator may use such other inventory control method(s) as approved by the Secretary of the Treasury that protects the revenue” be added at the end of proposed § 146.93(a)(3).

Customs Response: Customs disagrees. The provision for additional methods is covered by § 146.96.

Comment: Two commenters suggested re-designating proposed § 146.93(a)(4) as (b). The commenters propose the section should read as follows:

(b) *Feedstock eligible for attribution.* Feedstock admitted into the refinery zone or subzone is eligible for attribution to any final product in accordance with the operator’s inventory control method.

One commenter suggested the entire proposed section be deleted and replaced with:

(4) *Feedstock eligible for attribution.* Feedstock admitted into the refinery zone or subzone is eligible for attribution to the extent that such feedstock is not remaining in tank inventory at the end of the manufacturing period as determined in accordance with the operator’s zone procedure. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the zone, minus ending inventory.

Customs Response: Customs has incorporated some of the suggested language and, therefore, § 146.93(a)(4) (redesignated as § 146.93(b)) has been reworded.

Comment: Four commenters suggested redesignating proposed § 146.93(b) as (c) and replacing the phrase “introduced into a refinery operating unit” with “eligible for attribution under § 146.93(b) * * *”.

Customs Response: Customs agrees and has so modified the wording of this section (redesignated as § 146.93(d)).

Comment: Four commenters suggested redesignating proposed § 146.93(c) as (d), and deletion of the sentence “(a) d valorem * * * relative value calculation” because duties are not relevant to the relative value calculation.

Customs Response: Customs disagrees and this language has been retained.

Comment: One commenter recommended deletion of proposed § 146.94(a) in its entirety. Another commenter suggested that a refiner

should only be required to maintain appropriate inventory records to substantiate feedstocks processed and remaining in ending inventory. Two other commenters suggested that the section should read as follows:

(a) *Feedstock processed.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock eligible for attribution under § 146.93(a)(4) and in accordance with the operator’s selected inventory control method.

Another variation was offered by a commenter who suggested the section should read as follows:

(a) *Feedstock processed.* The operator shall maintain appropriate inventory records to establish the quantity of feedstock eligible for attribution under § 146.93(a)(4) during each manufacturing period.

Customs Response: Customs disagrees that this subsection should be deleted in its entirety. However, Customs does agree with the suggested changes and § 146.94(a) has been reworded to reflect the refiners’ assertion that feedstocks are manipulated or manufactured on admission.

Comment: Two commenters proposed replacement of the language in proposed § 146.94(b) with the following:

The operator shall maintain records to establish the quantity of products consumed in or removed from the zone or subzone during the entry period.

Another commenter suggested replacing this proposed section with:

(b) *Final product removed, consumed, lost or destroyed.* The operator shall maintain appropriate inventory records to establish the quantity of final products removed from, consumed in, lost, or destroyed in the subzone during the manufacturing period.

Customs Response: Customs disagrees with the suggested changes for the reasons noted in the Customs Response with respect to § 146.92(d).

Comment: Three commenters suggested deletion of any references to “week” in proposed § 146.94(c) and insertion of “approved entry period” instead.

Customs Response: As was explained in the March 4, 1994, **Federal Register** notice, while a manufacturing or accounting period may be greater than a week, there is no authority to permit a consumption entry covering products removed from a zone to exceed one week. Thus, the language of § 146.94(c) remains in substance as originally proposed.

Comment: Two commenters suggested deletion of the phrase “* * * is dutiable if entered for consumption

unless otherwise exempt from duty” in proposed § 146.94(d) and that it be replaced with “shall be treated as foreign merchandise when entered for consumption”.

Customs Response: The relevancy of this suggested change is not understood and, therefore, the suggestion has not been adopted. All merchandise, except for domestic status merchandise, when entered for consumption is foreign merchandise.

Comment: One commenter suggested that the title to proposed § 146.94(e) should read “Attributing gain or loss; acceptable methods” instead of the proposed title. Another commenter remarked that the regulations should specify that determination of gain or loss may be done either at time of separation (production) or at time of removal from or consumption in the zone.

Customs Response: Neither of these suggested changes have been adopted since they merely add words without changing the substance.

Comment: One commenter suggested that the word “account” in proposed § 146.94(e)(1) be replaced with “attribute”.

Customs Response: Customs disagrees. Attribution refers to matching actual measured amounts of privileged foreign feedstock consumed in, or removed from, the subzone refinery in the form of final products against the limits imposed by T.D. 66-16 or other approved method.

Comment: One commenter proposed insertion of the phrase “or loss” after “volume gain” in proposed § 146.94(e)(2) and insertion of the following at the end of the section:

The operator may determine the feedstock factor using values associated with the total removals from and consumption in the zone or subzone for the period in lieu of using such values for production during the period.

Customs Response: Customs agrees with respect to the first suggestion. Regarding the second suggestion, it is not clear which “period” the commenter is referring to. Customs has agreed with prior comments that the manufacturing period will be up to a calendar month. Therefore, this change was not adopted.

Comment: One commenter suggested insertion of the following language at the end of proposed § 146.94(e)(3):

* * * at either:

(A) The time of separation, or
(B) The time of removal from or consumption in the zone or subzone.

Customs Response: Customs disagrees. As noted above, prior commentors had requested that the

manufacturing period not exceed a calendar month and Customs revised the regulations accordingly.

Comment: A commenter suggested that deviations from T.D. 66-16 be provided for.

Customs Response: Customs agrees and has amended § 146.95(a)(3) to permit deviations from T.D. 66-16 with approval from Customs. It requires that any such deviation not be inconsistent with any related claim for drawback under 19 U.S.C. 1313.

Comment: Two commenters advocated incorporation of the entire proposed § 146.95 into proposed § 146.96.

Customs Response: Customs agrees. Therefore, proposed § 146.96 is now redesignated as § 146.95.

Comment: Three commenters suggested that any references to "listed in" in proposed § 146.95(b) should be replaced with "provided for".

Customs Response: Customs agrees with this suggestion and has so changed § 146.95(b) (redesignated as § 146.95(a)(2)).

Comment: One commenter suggested the following: replacement of the words "using the * * * in T.D. 66-16" in proposed § 146.96(a)(1) with the provisions of § 146.95—to be denominated as new subparagraphs (2) and (3); replacement of the words "not listed" with the words "not provided for"; and replacement of the reference to "T.D. 66-16" with the words "industry standards of potential production on a practical operating basis".

One commenter noted that proposed § 146.96(a)(1) should not be limited to feedstocks introduced into the refinery operating unit. Another commenter suggested replacing the phrase "introduced into a refinery operating unit" with "eligible for attribution".

A commenter proposed deletion of the sentence "The operator is * * * prior period." and the phrase "* * * using the * * * T.D. 66-16".

Customs Response: Customs does not agree that references to T.D. 66-16 should be deleted from these regulations. Attribution uses the industry standards of potential production on a practical operating basis as set forth in T.D. 66-16. End products which are admitted into the zone and subsequently entered for consumption without any further processing are eligible for attribution, and the text has been modified to reflect this. The definition of a refinery in § 146.92(f) refers to feedstocks and products listed in T.D. 66-16. Thus, to avoid confusion the same terminology is used here.

Comment: Two commenters suggested deletion of proposed § 146.96(a)(2) in its entirety. Other commenters suggested moving the example in this proposed section to the Appendix.

Customs Response: Customs disagrees that § 146.96(a)(2) (redesignated at § 146.95(b)) should be deleted. However, the example has been moved to the appendix.

Comment: All of the comments received suggested that the appendix include some introductory language to the effect that where there is any inconsistency between an example and the regulation, the regulation prevails.

Customs Response: Customs agrees and has incorporated this change.

Comment: Four of the comments received suggested that any references to "actual production records" and "recording" in proposed § 146.96(b) be changed to "refinery accounting records" and "accounting principles", respectively. The suggestion was also made that the example be included in the appendix.

Customs Response: Customs disagrees regarding the rewording of § 146.96(b) (redesignated as § 146.95(c)).

Accounting records could mean records that summarize net activity over a period. Customs needs to verify actual amounts admitted into, removed from, or consumed in a refinery subzone. Customs also needs to know if any adjustment was made to those amounts recorded rather than a period-end summary which nets the amount without disclosing the existence of any adjustment. The example is more appropriately placed within the section because it illustrates the precise principle applied.

Comment: One commenter proposed including introductory language in proposed § 146.97(a) as follows:

An operator may use the FIFO method of inventory accounting. The use of this method is illustrated in the appendix to this subpart.

Customs Response: Customs disagrees because § 146.93(a)(3) already provides that FIFO may be used as an inventory method.

Comment: Most commenters suggested addition of a new § 146.97(d) to provide as follows:

(d) *Appeal to the Commissioner.* In the event that the Director, Office of Regulatory Audit fails to approve a request under paragraph (c) of this section, an operator may file an appeal with the Commissioner of Customs for further review. Denial by the Commissioner of Customs may be appealed to the Court of International Trade under 28 U.S.C. 1581(i).

Customs Response: Customs disagrees with this suggestion. The proposal would change the statutory scope of jurisdiction of the Court which is beyond this rulemaking.

Comment: One commenter noted that the proposed regulations do not address zone-to-zone transfers and accounting for non-privileged foreign goods.

Customs Response: It is Customs position that these regulations are not the appropriate vehicle for addressing the issue of accounting for non-privileged status merchandise. Additionally, these regulations do not authorize the use of zone-to-zone transfers where the start of a manufacturing period in one zone refinery would be carried over to another zone refinery. Customs would consider promulgating regulations to handle such transfers but only if interested parties submitted detailed mathematical examples, with dates, showing how such transfers would be recorded by both the first and subsequent refineries, together with how the end products that are removed from the last zone would be entered for consumption, consumed in the zone, or withdrawn for exportation as defined in §§ 146.92 (e), (g), (i), and (j). Such a proposal must discuss the responsibilities of each refiner in the transfer chain with respect to recordkeeping and duty liability if there was a failure to maintain these records by one or more of the transferors.

Comment: A commenter noted that privileged foreign merchandise "liquidations" are not liquidations within the meaning of 19 U.S.C. 1500. Customs has the right to correct the classification and appraisal until the bulletin notice of liquidation is posted and the protest period begins. Prior to such final notice, the importer has the right and obligation to change classification when conditions warrant. Such change of classification does not affect zone status.

Customs Response: Customs basically agrees and has made modified § 146.65 to clarify this point.

Conclusion

Based on the above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with the following changes: § 146.65 is revised to reflect Customs authority under 19 U.S.C. 1500 to fix the final classification of merchandise classified as privileged merchandise; § 146.91 is revised to eliminate unnecessary references to eligible feedstock (the second sentence) and to include a new third sentence to clarify that these regulations do not address

zone-to-zone transfers; in § 146.92, one definition is deleted (§ 146.92(j)) and one definition is added (§ 146.92(k)); § 146.93 is expanded to include privileged status after admission (paragraph (e)) and new paragraph (b) is added to clarify feedstock eligible for attribution; in § 146.94, paragraph (a) is revised to clarify recordkeeping requirements applicable to feedstocks admitted into the subzone; and in § 146.95, language is added to subparagraphs (a)(3) (i) and (ii) regarding attribution to product or feedstock not listed in T.D. 66-16, and to subparagraphs (b) regarding Customs use of refinery operating records. Other changes to the proposed regulations involve the renumbering of two provisions caused by the incorporation of proposed § 146.95 into the text of proposed § 146.96, which is redesignated as § 146.95; a corresponding renumbering changes occur in proposed § 146.97, which is now redesignated as § 146.96. Also, the example contained in proposed § 146.96(a)(2) is moved to the appendix, which contains expanded examples.

The Regulatory Flexibility Act and Executive Order 12866

Based on the supplementary information set forth above, 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. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. 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 (OMB) in accordance with Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515-0189. The estimated average annual burden associated with this collection is 18,824 hours, or 2,353 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 Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Entry, Exports, Foreign-trade zones, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, the proposed amendments to part 146 of the Customs Regulations (19 CFR part 146), which were published at 59 FR 10342 on March 1, 1994, are adopted as a final rule as set forth below.

PART 146—FOREIGN-TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

2. In § 146.65, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 146.65 Classification, valuation, and liquidation.

(a) *Classification.*—(1) * * * Notwithstanding the grant of privileged status, Customs may correct any misclassification of any such entered merchandise when it posts the bulletin notice of liquidation under § 159.9 of this chapter.

* * * * *

3. Part 146 is amended by adding a new subpart H and appendix to read as follows:

Subpart H—Petroleum Refineries in Foreign-Trade Subzones

Sec.	
146.91	Applicability.
146.92	Definitions.
146.93	Inventory control and recordkeeping system.
146.94	Records concerning establishment of manufacturing period.
146.95	Methods of attribution.
146.96	Approval of other recordkeeping systems.

Appendix to Part 146—Guidelines for Determining Producibility and Relative Values for Oil Refinery Zones

Subpart H—Petroleum Refineries in Foreign-Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a

foreign-trade zone or subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart. It does not cover zone-to-zone transfers in which the fact of removal from one zone is ignored.

§ 146.92 Definitions.

(a) *Attribution.* "Attribution" means the association of a final product with its source material.

(b) *Feedstocks.* "Feedstocks" means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* "Feedstock factor" means the relative value of final products utilizing T.D. 66-16 (see § 146.92(h)), and which takes into account any volumetric loss or gain.

(d) *Final product.* "Final product" means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* "Manufacturing period" means a period selected by the refiner which must be no more than a calendar month basis, for which attribution to a source feedstock must be made for every final product made, consumed in, or removed from the refinery subzone.

(f) *Petroleum refinery.* "Petroleum refinery" means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66-16 into a product listed in the left column of the tables set forth in T.D. 66-16.

(g) *Price of product.* "Price of product" means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* "Producibility" is a method of attributing products to feedstocks for petroleum manufacturing in accordance with the Industry Standards of Potential Production set forth in T.D. 66-16.

(i) *Relative value.* "Relative value" means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Time of Separation.* "Time of separation" means the manufacturing period in which a privileged foreign status feedstock is deemed to have been

separated into two or more final products.

(k) *Weighted Average.* "Weighted average" means the relative value of merchandise, which is determined by dividing the total value of shipments in a given period by the total quantity shipped in the same given period. See example in section VI of the appendix to this part.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery subzone must be attributed to feedstock admitted into said petroleum refinery subzone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized methods set forth in this section. Records must be maintained on a weight or volume basis.

(1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which are eligible for attribution as set forth in this section during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.95(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the appendix to this part.

(b) *Feedstock eligible for attribution.* Only a feedstock that has been admitted into the refinery subzone is eligible for attribution. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the subzone, and less ending inventory.

(c) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock eligible for attribution during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (d) of this section.

(d) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in

order to make a relative value calculation.

(e) *Privileged status after admission.* Nonprivileged status feedstock is eligible for privileged status only if the request shows to the satisfaction of the Customs Service that there was no manipulation or manufacture of the feedstock to change its tariff classification before the request is granted. The absence of such manipulation or manufacture can be shown by demonstrating that the feedstock was placed in an empty tank, in a tank that contained only feedstock with the same nominal specifications or providing a sample which shows there was no change in tariff status. The existence of negligible amounts of other feedstocks may be disregarded only in accordance with § 146.95(b). A request for after-admission privileged foreign status shall be denied unless the feedstock's tank records from admission to the time that the request is made accompany the request. A refiner who makes such a request shall not put any other feedstock having different nominal specifications into the tank until the request for privileged status is granted. The Customs Service will deny or revoke a post-admission request if a refiner fails to retain the integrity of the feedstock in the tank.

(f) *Consistent use required.* The operator must use the selected method, measurement (weight or volume), and the price of product consistently (see § 146.92(g) of this subpart and paragraph (a) of this section).

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock admitted into the refinery subzone.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock(s) eligible for attribution under § 146.93(b) and in accordance with the operator's selected attribution method.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see section II of the appendix to this part).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period

must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a non-privileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods.*—(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain or loss.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§ 146.95 Methods of attribution.

(a) *Producibility.*—(1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks which were eligible for attribution during the current or prior manufacturing period. Attribution of final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66-16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66-16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(3) *Attribution to product or feedstock not listed in T.D. 66-16.* (i) For purposes

of attribution, where a final product or a feedstock is not listed in T.D. 66-16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate district director. The district director shall refer the request to the Director, Office of Regulatory Audit ("ORA"), who will verify the refiner's records and will coordinate with the Director, Office of Laboratories and Scientific Services ("OLSS"). The Director, ORA, shall either approve or deny the request. If the request is approved, the Director, ORA, shall publish a modification of T.D. 66-16. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, the operator shall use its actual operating records to determine attribution and any necessary relative value calculation upon the Customs Service demand and subject to verification.

(ii) An operator may attribute a final product to a feedstock in excess of the amount allowed under T.D. 66-16, when authorized by Customs, without losing the ability to attribute under T.D. 66-16 for all other feedstock-final product combinations. The operator must use its actual production records for the requested feedstock-final product combination. The operator must agree in writing that it will not, and it will not enable any other person, to file a drawback claim under 19 U.S.C. 1313 inconsistent with those actual production records for that feedstock-final product combination. The operator shall file its request in accordance with paragraph (a)(3) of this section. The Director, ORA, and the Director, OLSS, must determine whether T.D. 66-16 needs to be modified and shall publish in the Customs Bulletin each approval granted under this paragraph and request public comments with each such approval.

(4) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock a relative value must be assigned (see section IV of the appendix to this part).

(b) *Refinery operating records.* An operator may use the actual refinery operating records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's operating conventions to the extent that the operator demonstrates that it actually uses these conventions in its refinery operations. Whatever conventions are elected by the operator, they must be used consistently in order to be acceptable to Customs. Additionally, Customs may use these records to test

the validity of admissions into the subzone, consumption within and removals from the subzone.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.96 Approval of other recordkeeping systems.

(a) *Approval procedure.* An operator must seek prior approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

Appendix to Part 146—Guidelines for Determining Producibility and Relative Values for Oil Refinery Zones

Where an example is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency. Alternative formats are also acceptable so long as they are consistent with the provisions of this part.

I. Attribution Using Producibility Showing Manufacturing Periods From Admission to Removal Within a Calendar Month.

Volume losses and gains accounted for by weight.

Day 1

Receipt into the refinery subzone during a 30-day month:
50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

Day 10

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 10. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.V. 66-16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds ($50,000 \times .30$). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds ($50,000 \times .40$). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Receipt in the refinery subzone:
50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

Day 30

Removal from the refinery subzone:
30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that were admitted on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66-16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because

the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that were admitted into the refinery subzone Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66-16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 x .20). Likewise, the class IV crude oil could produce aviation gasoline in an amount up to 8,500 pounds (50,000 x .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000 - 5,000 x .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 x .65).

Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of the 10,000 pounds of jet fuel (22,300 x .65). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 x .50).

II. Attribution on a FIFO Basis

(Accounting for volume losses or gains by the weight method)

Day 1-5

Transfer, into the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1-5.

Day 10

Transfer, into the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6-15

Transfer, into the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1-5.

Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1-5 and 75,000 pounds of domestic Class III crude oil from Day 6-15.

Day 16-20

Transfer, into the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6-15 and 35,000 pounds of PF Class III crude oil from Day 16-20.

Day 21-25

Transfer, into the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of the Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was lost in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16-20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16-20. The remaining 3,500 pounds of PF Class III crude oil from Day 16-20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1-5 and Day 16-20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1-5, 50,000 pounds, equivalent to 150 barrels.

	A Lbs	B BBLS	C \$/BBL	D Product value	E R.V. Factor	F R.V. BBL	G Dutiable BBL
Residual oil	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor gasoline	5,000	20	26.00	520	1.5682	31	31
Totals	50,000	153	.....	2,487	.....	150	150

A=Pounds Attributed.
B=Equivalent Barrels.

C=Price of Product.
 D=BxC.
 E=C/(Total of Column D/Attributed Crude BBLs).
 Residual Oil RV Factor=15.00/(2,487/150)=.9047.
 F=BxE.
 G=Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLs) of PF Class II crude entered customs territory duty equals \$7.88 (150x.0525).

Feedstock factor calculation for UIN Day 16-20, 46,500 pounds equivalent to 157 barrels.

	Lbs	BBLS	\$/BBL	Product value	Feedstock factor	R.V. BBL	Dutiable BBL
Jet Fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss	1,500	5	12.00	60	0.4902	2	0
Totals	46,500	164	.....	3,843	.....	157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable (assume refinery not barred by duty-free consumption restriction). Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

IV. Attribution to Privileged Foreign Feedstock; Relative Value; Monthly Manufacturing Period, Weekly Entries, Attribution to a Prior Period; Volume Loss or Gain Shown by Volume Differences.

An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights)	20,000
Gasoline—Domestic Consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign crude)	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum Coke	10,000
Distillate	5,000
Petrochemicals	15,000
	105,000

There is a gain of 105,000 – 95,000=10,000

Using the tables in T.D. 66-16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petroleum coke	Distillate	Petro-chemical
Class II PF Crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude	20,000	14,000	18,200	8,000	17,800	5,800

Feedstock factors are calculated:

	Barrels	Value barrels	Value	Feedstock factors
Gasoline	40,000	\$25	\$1,000,000	.9117
Jet Fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum Coke	10,000	10	100,000	.3647
Petrochemicals	15,000	40	600,000	1.4587

	Barrels	Value barrels	Value	Feedstock factors
Gain	105,000	.....	2,605,000	.....
	- 10,000	\$2,605,000	.....	.....
Total	195,000		= \$27.42 average value p/bbl	

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel	24,192	(20,291 feedstock attributed to Class III PF Crude).
	10,808	Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude).
	5,000	Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed to Class III D Crude).
Petroleum Coke	8,418	(3,070 feedstock attributed to Class II PF Crude).
	1,582	Class III NPF Crude (attribution of 577 solely for purposes of accounting for the amount of NPF used).
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic).
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude).
	6,025	(8,789 feedstock attributed to Class III PF Crude).
	10,000	

V. Weekly Entry, Weekly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Week.

On the weekly estimated production CF 3461, the refiner is required to provide a pro forma invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. For example, on CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

Product week 1	PF shipments (MBBLS)	Value/barrel (platts)	Total value
Motor Gasoline	20,000	\$35	\$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000	.....	\$21,525,000

Attributed Feedstock—Class III Crude: 615,000@ \$105=\$64,575 (estimated duties)

During that week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. Column 3 is the actual "weighted average" value for the manufacturing period, therefore, no reconciliation is necessary.

1 Product	2 PF Shipments (mbbls)	3 Value/barrel (wt. avg.)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distribu. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	\$35.70	\$713,179	1.104545	22,065	\$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053	.....	16,756,891	.....	518,451 (9)	54,437 (10)

Class III Crude Consumed 518,451×\$.105 = \$54,437

Volumetric Gain 21,602

Avg. Value/Barrel Crude Consumed=\$16,756,891÷518,451=\$32.321 (8)

This example shows volumetric gain of 21,602 mbbbls. However, in that PF was requested, liquidated duties are only on actual feedstock (class III crude) used in the refining process. (518,451 @ \$.105=\$54,437).

VI. Weekly Entry, Monthly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Month.

For example, on the CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (platts)	4 Total value
Week 1:			
Motor Gasoline	20,000	\$35	\$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000	.....	21,525,000

Attributed Feedstock—Class III Crude: 615,000 @ \$.105=\$64,575 (estimated duties)

During the week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. The reported relative values may be an estimate based on Platts, prior period actual prices, or the refiner's transfer prices. For this example, the estimates are based on the refiner's actual transfer prices. Listed below are the data to be shown on the weekly CF 7501s with actual quantities shipped and estimated values for weeks 1-5.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimates)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	\$35.70	\$713,179	1.104545	22,065	\$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053	.....	16,756,891	.....	518,451 (9)	\$54,437 (10)

Class III Crude Consumed 518,451×\$.105=\$54,437

Volumetric Gain 21,602

Avg. Value/Barrel Crude Consumed=\$16,756,891÷518,451=\$32.321 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	\$36.90	\$762,022	1.145429	23,654	\$2,484
Total Alkylate	23,435	44.25	1,036,999	1.373584	32,190	3,380
Heavy Reformate	59,819	30.35	1,815,507	.942108	56,358	5,918
Reformer Feed	101,167	30.10	3,045,127	.934347	94,526	9,925
Raffinates	172,317	29.30	5,048,888	.909514	156,726	16,456
Jet fuel	165,291	30.70	5,074,434	.952972	157,519	16,539
Total	542,680	.....	\$16,782,977	.....	520,973	\$54,702

Class III Crude Consumed 520,973×\$.105 = \$54,702

Volumetric Gain 21,707

Avg. Value/Barrel Crude Consumed = \$32.215

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	\$34.90	\$652,246	1.091819	20,405	\$2,142
Total Alkylate	21,511	40.25	865,818	1.259190	27,087	2,844
Heavy Reformate	57,371	30.90	1,772,764	.966682	55,460	5,823
Reformer Feed	99,707	30.90	3,080,946	.966682	96,386	10,121
Raffinates	168,112	29.65	4,984,521	.927577	155,938	16,374

1 Product	2 PF shipments (mmbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Jet Fuel	172,092	29.85	5,136,946	.933834	160,707	16,874
Total	537,482	.....	\$16,493,241	.....	515,983	\$54,178

Class III Crude Consumed 515,983 × \$.105 = \$54,178
 Volumetric Gain 21,499
 Avg. Value/Barrel Crude Consumed = \$31.965

1 Product	2 PF shipments (mmbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	\$32.85	\$719,579	1.027237	22,502	\$2,363
Total Alkylate	22,552	38.75	873,890	1.211733	27,327	2,869
Heavy Reformate	58,116	29.60	1,720,234	0.925607	53,791	5,648
Reformer Feed	101,058	29.40	2,971,105	0.919353	92,908	9,755
Raffinates	169,823	30.15	5,120,163	0.942806	160,110	16,812
Jet Fuel	171,493	31.05	5,324,858	0.970949	166,511	17,484
Total	544,947	.....	\$16,729,829	.....	523,149	\$54,931

Class III Crude Consumed 523,149 × \$.105 = \$54,931
 Gain 21,798
 Avg. Value/Barrel Crude Consumed = \$31.979

1 Product	2 PF shipments (mmbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	\$37.25	\$334,878	1.136260	10,215	\$1,073
Total Alkylate	9,984	45.10	450,278	1.375713	13,735	1,442
Heavy Reformate	25,351	31.50	798,557	0.960864	24,360	2,558
Reformer Feed	43,492	31.35	1,363,474	0.956288	41,592	4,367
Raffinates	75,172	29.95	2,251,401	0.913583	68,677	7,211
Jet fuel	75,795	30.56	2,316,295	0.932190	70,654	7,418
Total	238,784	.....	\$7,514,883	.....	229,233	\$24,069

Class III Crude Consumed 229,233 × \$.105 = \$24,069
 Gain 9,551
 Avg. Value/Barrel Crude Consumed = \$32.783

As provided in the regulations, the refiner files an amended CF 7501 for each week based on the refiner's actual weighted average values for the month, as shown below.

Product	Value/ bar- rel (MBBLS)
Month End:	
Motor Gasoline	\$35.27
Total Alkylate	41.84
Heavy Reformate	30.66
Reformer Feed	30.54
Raffinates	29.69
Jet Fuel	30.42

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES

1 Product	2 PF shipments (mmbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5)×(2)	7 Amended wt. avg. duties (6)×(10) (9)
Motor Gasoline	19,977	\$35.27	\$704,589	1.095716	21,889	\$2,298
Total Alkylate	22,907	41.84	958,429	1.299823	29,775	3,126
Heavy Reformate	58,164	30.66	1,783,308	.952499	55,401	5,817
Reformer Feed	100,279	30.54	3,062,521	.948771	95,141	9,990
Raffinates	170,293	29.69	5,055,999	.922365	157,072	16,493

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES—Continued

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5)×(2)	7 Amended wt. avg. duties (6)×(10) (9)
Jet Fuel	168,433	30.42	5,123,732	.945043	159,176	16,713
Total	540,053	.....	\$16,688,578	.....	518,454 (9)	54,437 (10)

Class III Crude Consumed = 518,454 × \$.105 = \$54,437

Volumetric Gain 21,599

Avg. Value/Bbl Crude Consumed = \$16,688,578 ÷ 518,454 = \$32.189 (8)

Note: No change in amended total duties, because duty is computed on total quantity of class III crude used. The difference is amongst the various products, i.e., estimated weekly CF 7501 duties paid for Motor Gasoline was \$2,317, while the reconciled amount as shown above is \$2,298. Additional duties owed or refunds due would depend on the reconciliation of the weekly entry as an entirety.

VII. Weekly entry, monthly manufacturing period, relative values calculated on prior manufacturing period's actual weighted average values. The prior period (PP) values are set forth below:

Product	Value/Barrel (wt. avg.)
Motor Gasoline	\$ 35.28
Total Alkylate	41.90
Heavy Reformate	31.78
Reformer Feed	30.02
Raffinates	31.10
Jet Fuel	28.80

Thereafter, the information provided or both the CF 3461 and CF 7501 filed for each weekly entry with respect to relative values would remain the same. The only estimated amount would be the quantity to be removed on the CF 3461 as shown below. On the CF 3461 the refiner estimates the following shipments and uses a prior manufacturing period's actual weighted average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value
Week 1			
Motor Gasoline	20,000	\$35.28	\$705,600
Total Alkylate	25,000	41.90	1,047,500
Heavy Reformate	60,000	31.78	1,906,800
Reformer Feed	110,000	30.02	3,302,200
Raffinates	200,000	31.10	6,220,000
Jet Fuel	200,000	28.80	5,760,000
Total	615,000	.....	18,942,100

Attributed Feedstock—Class III Crude: 615,000 @ \$.105 = \$64,575 (estimated duties)

On the CF 7501, the refiner reports the following shipments and uses a prior manufacturing period's actual average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	\$35.28	\$704,789	1.097219	21,919	\$2,902
Total Alkylate	22,907	41.90	959,803	1.303104	29,850	3,134
Heavy Reformate	58,164	31.78	1,848,452	.988368	57,486	6,036
Reformer Feed	100,279	30.02	3,010,376	.933632	93,623	9,830
Raffinates	170,293	31.10	5,296,112	.967220	164,710	17,295
Jet Fuel	168,433	28.80	4,850,870	.895689	150,863	15,840
Total	540,053	.....	\$16,670,402	.....	518,451 (9)	\$54,437 (10)

Class III Crude Used 518,451 × \$.105 = \$54,437

Volumetric Gain 21,602

Avg. Value/Barrel Crude Used = \$16,670,402 ÷ 518,451 = \$32.154 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	\$35.28	\$728,567	1.096128	22,636	\$2,377
Total Alkylate	23,435	41.90	981,926	1.301808	30,508	3,203
Heavy Reformate	59,819	31.78	1,901,048	.987386	59,064	6,202
Reformer Feed	101,167	30.02	3,037,033	.932704	94,359	9,908
Raffinates	172,317	31.10	5,359,059	.966259	166,503	17,483
Jet Fuel	165,291	28.80	4,760,381	.894799	147,903	15,529
Total	542,680	.....	16,768,014	.....	520,973	54,702

Class III Crude Used 520,973×\$.105=\$54,702
 Volumetric Gain 21,707
 Avg. Value/Barrel Crude Used=\$32.186

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	\$35.28	\$659,348	1.099168	20,542	\$2,157
Total Alkylate	21,511	41.90	901,311	1.305418	28,081	2,948
Heavy Reformate	57,371	31.78	1,823,250	.990124	56,803	5,964
Reformer Feed	99,707	30.02	2,993,204	.935290	93,254	9,792
Raffinates	168,112	31.10	5,228,283	.968938	162,889	17,103
Jet Fuel	172,092	28.80	4,956,250	.897280	154,414	16,214
Total	537,482	.....	16,561,646	.....	515,983	54,178

Class III Crude Used 515,983×\$.105=\$54,178
 Volumetric Gain 21,499
 Avg. Value/Barrel Crude Used=\$32.097

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	\$35.28	\$772,808	1.097390	24,038	\$2,524
Total Alkylate	22,552	41.90	944,929	1.303306	29,391	3,086
Heavy Reformate	58,116	31.78	1,846,926	.988522	57,447	6,032
Reformer Feed	101,058	30.02	3,033,761	.933777	94,365	9,908
Raffinates	169,823	31.10	5,281,495	.967371	164,281	17,250
Jet Fuel	171,493	28.80	4,938,998	.895829	153,627	16,131
Total	544,947	.....	16,818,917	.....	523,149	54,931

Class III Crude Used 523,149×\$.105=\$54,931
 Volumetric Gain 21,798
 Avg. Value/Barrel Crude Used=\$32.149

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	\$35.28	\$317,167	1.097698	9,868	\$1,036
Total Alkylate	9,984	41.90	418,330	1.303671	13,016	1,367
Heavy Reformate	25,351	31.78	805,655	.988799	25,067	2,632
Reformer Feed	43,492	30.02	1,305,630	.934039	40,623	4,265
Raffinates	75,172	31.10	2,337,849	.967642	72,740	7,638
Jet Fuel	75,795	28.80	2,182,896	.896080	67,919	7,131
Total	238,784	.....	7,367,527	.....	229,233	24,069

Class III Crude Used 229,233×\$.105=\$24,069
 Volumetric Gain 9,551
 Avg. Value/Barrel Crude Used=\$32.14

At the end of the month, the refiner must calculate its actual weighted average values for use in the subsequent period.

RECONCILIATION OF RELATIVE VALUE FOR THE SUBSEQUENT PERIOD

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2x3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5x2)	7 Liq. duties (6x(10) (9)
Month End:						
Motor Gasoline	90,212	\$35.27	\$3,181,777	1.095682	98,844	\$10,379
Total Alkylate	100,389	41.84	4,200,276	1.299783	130,484	13,701
Heavy Reformate	258,821	30.66	7,935,452	.952470	246,519	25,885
Reformer Feed	445,703	30.54	13,611,770	.948742	422,857	44,400
Raffinates	755,717	29.69	22,437,238	.922336	697,025	73,188
Jet Fuel	753,104	30.42	22,909,424	.945014	711,694	74,726
Total	2,403,946	.....	74,275,937	.....	2,307,423 (9)	242,279 (10)

Class III Crude Used 2,307,423x\$.105=\$242,279
 Volumetric Gain 96,523
 Avg. Value/Barrel Crude Used=\$74,275,937÷2,307,423=\$32.19 (8)

Note: Actual monthly reconciliation data could result in attributions on a product basis that are less than or greater than weekly distributions. This is due to the "weighing" of the data i.e., motor gasoline on a weekly basis was \$10,996 as compared to \$10,379 as above. No additional duties are due to the averaging.

Michael H. Lane,
 Acting Commissioner of Customs.

Approved: April 5, 1995.

John P. Simpson,
 Deputy Assistant Secretary of the Treasury.
 [FR Doc. 95-10226 Filed 4-26-95; 8:45 am]
 BILLING CODE 4820-02-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AH37

Time Limit for Filing a Claim for REPS Benefits

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the special allowance known as REPS (Restored Entitlement Program for Survivors). This amendment is necessary to conform the regulations to a decision of the United States Court of Appeals for the Federal Circuit which upheld a decision of the United States Court of Veterans Appeals invalidating the VA regulation establishing a time limit for filing a claim for REPS benefits. The purpose of the amendment is to remove the time limit.

EFFECTIVE DATE: This amendment is effective April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 amended title 42, United States Code, to terminate or reduce payment of the Social Security child's insurance benefit and to terminate the mother's benefit at the point at which the youngest child reached age 16. Previously, the mother's benefit had terminated when the youngest child reached age 18. Section 156 of Pub. L. 97-377, which established a program known as the Restored Entitlement Program for Survivors or REPS, in effect, restored such terminated or reduced benefits for surviving spouses and children of veterans who died on active duty prior to August 13, 1981, or died as a result of service-connected disability incurred or aggravated prior to that date.

Under the authority granted in section 156, VA issued regulations, codified at 38 CFR 3.812, which implemented the statute. Paragraph (f) of § 3.812 provided that benefits could be paid from the first day of the month during which the claimant first became eligible, if application was filed within 11 months following that month. This paragraph was amended on June 28, 1993, to require that the application be filed within 6 months of the month during which the claimant first became eligible in order for benefits to be payable from the first day of the month in which eligibility arose.

The United States Court of Veterans Appeals struck down subsections (2) and (3) of 38 CFR 3.812(f), which specified the time limits for filing an application for REPS benefits, in the case of *Cole v. Derwinski*, 2 Vet. App. 400 (1992), *aff'd*, 35 F.3d 551 (Fed. Cir. 1994), involving a claim for the REPS mother's benefit. The court relied on its *Cole* decision in *Skinner v. Brown*, 4 Vet. App. 141 (1993), *aff'd*, 27 F.3d 1571 (Fed. Cir. 1994), a case involving a claim for the REPS child's benefit.

In affirming the Court of Veterans Appeals decision, the United States Court of Appeals for the Federal Circuit held that the VA regulation denying retroactive payment to claimants who failed to file a REPS claim within 6 months of the month entitlement arose was contrary to the plain meaning of the REPS statute, which imposes no time restrictions on filing, and was therefore invalid. Paragraph (f) of 38 CFR 3.812 is therefore amended to show that there is no time limit for filing a claim for REPS benefits. The only restriction on payment to an otherwise eligible claimant is that no payment can be made for any period prior to January 1, 1983, the effective date set by the REPS statute.

This final rule constitutes an interpretive rule. Accordingly, it is made effective upon publication.

The Secretary of Veterans Affairs certifies that this final rule will not have