

William H. Gillers, Director, Office of Management Advisor Services,
Department of the Treasury
John W. Mangels, Associate Director,
Office of Management/CFO, Financial Crimes Enforcement Network

Performance Review Board 2.

The purpose of this Board is to review the performance appraisals of all senior executives *except* those rated by the Commissioner or Deputy Commissioner of Customs. All are Assistant Commissioners or Regional Commissioners of the U.S. Customs Service. The members are:

Assistant Commissioners

Samuel H. Banks, Office of Field Operations
Walter B. Biondi, Office of Investigations
Douglas M. Browning, Office of International Affairs
Edward F. Kwas, Office of Strategic Trade
William F. Riley, Office of Information and Technical Services
Deborah J. Spero, Human Resources Management
Homer J. Williams, Office of Internal Affairs
Vincette Goerl, Office of Finance
Stuart P. Seidel, Office of Regulations and Rulings

Regional Commissioners

Philip W. Spayd, Northeast Region
Anthony N. Liberta, New York Region
Garnet J. Fee, North Central Region
J. Robert Grimes, South Central Region
Robert S. Trotter, Southwest Region
Robert McNamara, Southeast Region
Rudy Camacho, Pacific Region.

Dated: June 28, 1995.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 95-16332 Filed 7-3-95; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

June 27, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office

of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Number: New

Form Number: OTS Form 1602

Type of Review: New Collection

Title: Customer Service Survey for Interpretive Opinions

Description: This information collection is to obtain feedback on the quality of opinions produced by the Office of Thrift Supervision in order to meet the goals of the National Performance Review with respect to improving customer service.

Respondents: Savings and Loan Associations, Savings Banks, Attorneys

Estimated Number of Respondents: 50

Estimated Burden Hours Per

Respondent: .25 Hrs. Avg

Frequency of Response: Once

Estimated Total Reporting Burden: 12.50 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906-6025, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95-16362 Filed 7-3-95; 8:45 am]

BILLING CODE 6720-01-P

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (P.L. 92-41). For example, the Contracts Disputes Act of 1978 (P.L. 95-563) and the Prompt Payment Act (P.L. 97-177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1995 and ending on December 31, 1995, is 6 $\frac{3}{8}$ per centum per annum.

Dated: June 27, 1995.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 95-16407 Filed 7-3-95; 8:45 am]

BILLING CODE 4810-35-M

Customs Service

Notice to Test the Use of Reconciliation for Adjustments Made to the Price of Imported Merchandise by Related Party Companies Under 26 U.S.C. 482

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

ACTION: General Notice.

SUMMARY: This notice announces Customs plan to conduct a test regarding the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. This notice invites public comments concerning any aspect of the planned test, informs interested members of the public of the eligibility requirements for voluntary participation in the testing of reconciliation, for this purpose, and describes the basis on which Customs will select participants.

DATES: The test will commence no earlier than October 1, 1995, and will run until December 31, 1996. Comments concerning the methodology of the reconciliation prototype must be received on or before (insert date 30 days from publication in the **Federal Register**). To participate in this reconciliation test, the application must be filed and approved by Customs on or before October 1, 1995.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in this test should be addressed to Mr. William F. Inch, Director, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2311, Washington, D.C. 20229-0001.

FOR FURTHER INFORMATION CONTACT: Matthew Krinski 202-927-0411.

SUPPLEMENTARY INFORMATION:

Background

Section 1059A of the Internal Revenue Code

Section 1059A of the Internal Revenue Code provides that in related party transactions the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

The legislative history of section 1059A indicates that Congress intended to preclude the "whipsaw" effect on U.S. revenue which occurs when a party is allowed to claim a price for "computing the customs value of such property by the purchaser" that is lower than the price claimed for tax purposes.

When section 1059A was enacted, Congress was aware that the Customs value statute recently had been amended to make price paid the critical cost factor taken into account by the Customs Service in valuing goods for duty purposes. The legislative history of section 1059A also indicates that Congress wanted section 1059A to address this situation by attempting to place a ceiling on "the amount of any [such] costs" that can be claimed for tax purposes. All of the applicable legislative reports indicate, without exception, that Congress intended that section 1059A would instill some *uniformity* on the amount of costs which may be claimed to the IRS for tax purposes by limiting the amount of such costs to the amount claimed to, and taken into account by, the Customs Service in computing the Customs value.

The legislative history did state that appropriate adjustments may be made in cases where customs pricing rules differ from appropriate tax rules—as, for example, with the inclusion or exclusion of freight charges. Finally, the history states section 1059A applies to transfer prices subject to section 482 of the Internal Revenue Code.

In July of 1994, the Internal Revenue Service (IRS) issued final regulations implementing 26 U.S.C. 482. The IRS subsequently began considering whether and to what extent the 1059A regulations should be amended in the context of the new section 482 regulations. The section 482 regulations, specifically 26 CFR 1.482-1(a)(3), permits a controlled taxpayer, if necessary to reflect an "arm's length result", to "report on timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged." The IRS is considering whether the 1059A regulations should be amended to allow

the taxpayer, under appropriate circumstances, to make the upward section 482 adjustment.

This document announces a test that will facilitate the IRS/Customs decision as to whether reconciliation procedures provide a viable and appropriate circumstance for a taxpayer/importer to make a post entry upward adjustment to the price of imported merchandise.

Customs Value Law

For Customs purposes the appraised value of imported merchandise is determined pursuant to section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act (TAA) of 1979. Transaction value is the primary basis of appraisal. Transaction value is defined in section 402(b)(1) as the "price actually paid or payable for the merchandise when sold for exportation to the United States" plus specified statutory additions.

Pursuant to section 402(b)(2)(A)(iv) the transaction value of imported merchandise shall be the appraised value *only if* the buyer and seller are not related, or if the buyer and the seller are related, the transaction value is acceptable under 402(b)(2)(B). Section 402(b)(2)(B) provides that transaction value between a related buyer and seller is acceptable if the buyer demonstrates that the declared transaction value meets one of the following two tests: 1) Circumstances of the Sale or 2) Test Values.

The reconciliation test, announced in this document, is designed for participants that engage in related party transactions.

Related Party Transactions

Under section 402(g) of the TAA the following persons are treated as related:

- (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.
- (2) Any officer or director of an organization and such organization.
- (3) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.
- (4) Partners.
- (5) Employer and employee.
- (6) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

For purposes of 402(g)(G), the phrase "two or more persons directly or

indirectly controlling, controlled by, or under common control with, any person" is understood to cover the following situations:

- (1) where one of them directly or indirectly controls the other;
- (2) where both of them are directly or indirectly controlled by a third person; or
- (3) where together they directly or indirectly control a third person.

For purposes of this test, Customs will consider the fact that the related party importer has reason to believe that an upward adjustment may be made to the price as evidence that the relationship may have affected the price actually paid or payable for the imported merchandise. Therefore, transaction value may not be acceptable.

Rather, the merchandise may be appraised under section 402(f). The appraised value pursuant to section 402(f) will be derived from the transaction value method. That is, the appraised value will be the price for the imported merchandise after the upward section 482 adjustment is undertaken by the importer/taxpayer plus the applicable statutory additions: packing, selling commissions, assists, royalties/license fees and proceeds of subsequent resale. In order to participate in the test, the importer/taxpayer must agree that 402(f) is the proper basis of appraisal, in the event an upward section 482 adjustment is, in fact, claimed for tax purposes.

Title VI of the North American Free Trade Agreement Implementation Act

In order for the importer to comply with Customs value law, when making upward adjustments, a mechanism must be established that permits the importer to submit information related to the upward adjustment after the time of entry. Customs has determined that the reconciliation provisions of the North American Free Trade Agreement Implementation Act (the Act) create a possible vehicle permitting these circumstances. Specifically, Title VI of the Act, Public Law 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 637 in Subtitle B of the Act amends Section 484 of the Tariff Act of 1930 by establishing a new subsection (b) entitled "Reconciliation". Reconciliation is a planned component of the NCAP. Section 631 of the Act authorizes tests of planned NCAP components. Section 101.9(b) of the

Customs Regulations, provides the regulations governing the testing of NCAP components. See T.D. 95-21 (60 FR 14211, March 16, 1995).

This test is established pursuant to those regulations.

Reconciliation

Reconciliation will allow an importer to provide Customs with information not available at the time of entry summary filing and which is necessary to ascertain the final appraisal of imported merchandise. The reconciliation must be filed no later than 15 months from the date of the first entry summary filed under that reconciliation.

A reconciliation permits the liquidation of an entry summary/summaries despite the fact that undetermined information will be transmitted to Customs at a later time through the reconciliation process. Assuming there are no other outstanding issues, the entry summaries will be liquidated for all purposes other than that which is identified by the importer as pending reconciliation. The reconciliation will be liquidated in accordance with 19 U.S.C. 1500. The liquidation of the reconciliation may be protested, in accordance with 19 U.S.C. 1514, but the protest may only pertain to issues covered by the liquidated reconciliation.

Description of Test

This test will be limited to participants who meet the eligibility criteria set forth below. It will cover entry summaries filed by those participants from October 1, 1995 to March 31, 1996 or the end of the participant's tax year, whichever comes first. By statute, reconciliation must be filed within 15 months of the entry summary. For purposes of this test, participants must file the reconciliation within 15 months of the filing of the first affected entry summary or by December 31, 1996, whichever comes first.

Application

Applications will be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, United States Customs Service, 1301 Constitution Ave. N.W. Room 2311, Washington D.C. 20229-0001. All applicants will be notified in writing of approval or disapproval regarding test participation. All applicants who meet the eligibility criteria will be chosen to participate in this test. The application must address the ability to meet the eligibility requirements. The applicant must consent, in the application, to all the

conditions set forth in the description of this test and eligibility criteria. The applicant must set forth in the application the date on which the applicant's tax year ends.

By applying, applicants agree that the value for merchandise covered by all entry summaries filed by them or on their behalf on or after October 1, 1995 until the end of the tax year or March 31, 1996, whichever comes first, shall be finally determined by the liquidation of the reconciliation filed in accordance with the test. The Office of Regulatory Audit will review the application to determine that the applicant has met all eligibility requirements.

Documentation Required To Support Reconciliation

The approved participant shall maintain and produce upon Customs request all relevant documentation to support the change in the entered value. The reconciliation shall include the following information:

1. The entry numbers and dates of all entries filed with Customs during the period.
2. A cumulative list of units imported by classification number and the change (final entered value) to that entered value.

In order to support the reconciliation, the approved applicant shall maintain and produce upon Customs request all relevant documentation to support the change in entered value. The approved applicant may be required to provide any or all of the following documentation:

1. The IRS Schedule M-1, and the Form 1120 Corporate Tax Return.
2. Any and all other supporting documentation filed along with the M-1 and the Form 1120 that was furnished to the IRS.
3. Any or all IRS documents or communications with the participant regarding the relevant 482 adjustment.
4. Any and all documentation including any books and records or computerized data to relate the 482 adjustment to the entries filed with Customs.

Such information and supporting material should be provided in a format or electronic media commonly in use. Examples are an IBM compatible computer 3.5 disk utilizing a software product such as Access or Excel or other similar spreadsheet or database application such as Lotus 1, 2, 3.

Verification

Customs Regulatory Audit, in conjunction with other Customs disciplines, will determine if any verification effort is necessary to

establish the accuracy of the details submitted. The extent of the verification will be determined by Regulatory Audit, and if an audit is required, established Regulatory Audit procedures will be followed.

Eligibility Criteria

In order to qualify for this test of reconciliation, importers must have reason to believe they may invoke the IRS regulations to make upward adjustments to the price of the imported merchandise. Importers must have the capability to provide, on an entry-by-entry basis, the electronic entry of merchandise and the electronic entry summary of required information (ABI). Other requirements and conditions are as follows:

1. The test only applies to the related party transactions engaged in by participants who qualify under Internal Revenue Service Section 482 requirements to make upward adjustments and which are not subject to Antidumping/Countervailing Duty proceedings.
2. Participants' tax year must end between October 31, 1995 and March 31, 1996.
3. Customs decision to allow a company to participate in the test program will be made in consultation with the Internal Revenue Service.
4. Each participant must provide U.S. Customs with the methodology that will be used to arrive at the final price of the imported merchandise.
5. Each participant agrees that appraisal is under section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, if, in fact, an upward section 482 adjustment is made for tax purposes.
6. Entries involving merchandise under this test will not be eligible for drawback.

Selectivity Criteria

The Office of Regulatory Audit, in conjunction with other Customs disciplines, will review the application to ensure the eligibility requirements are met. All applicants who meet the eligibility criteria will be allowed to participate, provided no other Customs office objects.

Objectives of the Test

The objectives of this test are:

1. To work with the trade community to further compliance in the value area regarding related party transactions.
2. To allow companies intending to make Internal Revenue Service Section 482 adjustments, which may ultimately result in an upward adjustment to the price for merchandise, the opportunity

to reconcile their business operations regarding U.S. Customs and Internal Revenue Service requirements applicable to related party transactions.

3. To determine if reconciliation is a viable method to ensure a coordinated and consistent Customs response to Internal Revenue Section 482 adjustments which result in the upward adjustment of the Customs valuation under Section 1059A.

5. To test the type of information needed by Customs to process a reconciliation.

Test Evaluation Criteria

The criteria which will be used to evaluate whether or not reconciliation is a viable means to allow importers which make upward adjustments to the price of imported merchandise will be based on measurable outcomes which include:

1. The number of participants;
2. Customs resources expended to administer and monitor the program;
3. Customs resources expended to verify final reconciliation entry claims and the methodologies applied;

4. Amount of additional revenue collected;

5. Survey of participants on the conduct of the test and its affect on their business operations; and

6. IRS and Census satisfaction with the results of the test.

Dated: June 28, 1995.

Karen J. Hiatt,

Acting Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 95-16406 Filed 7-3-95; 8:45 am]

BILLING CODE 4820-02-P