TABLE 1.—COMPLIANCE TIMES

For—	Initial compliance time—	Repetitive interval—
(1) Work Package 1	Within 180 days after the effective date of this AD.	At intervals not to exceed 180 days, until all outboard roller assemblies have been replaced per Work Package 2 of the service bulletin.
(2) Work Package 2	Within 18 months after the effective date of this AD.	None.

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 2: Boeing Alert Service Bulletin 747–25A3335 refers to Goodrich Alert Service Bulletin 65B60176–25-A01, dated March 3, 2003, as an additional source of service information for replacing the outboard roller assemblies.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 747–25A3335, dated July 3, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24227 Filed 11–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 178

[CBP Dec. 04–36]

RIN 1505–AB32

Prototypes Used Solely for Product Development, Testing, Evaluation, or Quality Control Purposes

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection Regulations in order to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty-free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation or quality control. The final regulations set forth the procedures for both the identification of those prototypes properly entitled to duty-free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

EFFECTIVE DATE: This final rule is effective on December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, 202–344–2556.

SUPPLEMENTARY INFORMATION:

Background

The Product Development and Testing Act of 2000 (PDTA) was enacted on November 9, 2000, as part of the Tariff Suspension and Trade Act of 2000 (Act) (Pub. L. 106–476). The provisions of the PDTA are found in sections 1431–1435 of the Act.

The purpose of the PDTA, as set forth in section 1432(b) of the Act, is to promote product development and testing in the United States by allowing the importation on a duty-free basis of articles commonly referred to as ''prototypes'' that are to be used exclusively for product development, testing, evaluation or quality control.

Until the enactment of the PDTA, prototype articles had generally been subject to customs duty when imported, unless the articles were eligible for duty-free treatment under a special trade program, such as the North American Free Trade Agreement (NAFTA) (19 U.S.C. 3301 *et seq.*), or unless they were entered under a temporary importation bond (TIB) (subheading 9813.00.30, Harmonized Tariff Schedule of the United States (HTSUS)). Furthermore, the value of these prototypes had to be included in the dutiable value of any imported production merchandise that resulted from the same design and development efforts to which the prototype articles themselves were dedicated. In effect, duty on a prototype good was assessed twice, once when the prototype was imported and a second time as part of the dutiable value of the related imported production merchandise.

Consequently, to expedite and encourage the use of prototypes in the United States, section 1433 of the Act amended the Harmonized Tariff Schedule of the United States (HTSUS) by inserting a new subheading 9817.85.01 in subchapter XVII of chapter 98, HTSUS, to provide for the duty-free entry of prototype articles. Section 1433 of the Act also included a new U.S. Note 6 in subchapter XVII of chapter 98, HTSUS, to define the term ''prototypes'' as used in HTSUS subheading 9817.85.01.

CBP Rulemaking

By a document published in the **Federal Register** (67 FR 10636) on March 8, 2002, Customs (which has been renamed Customs and Border Protection (CBP) after being transferred to the Department of Homeland Security) proposed to amend the Customs Regulations (now the CBP Regulations) to add a new § 10.91, in accordance with the requirements of the

PDTA, that would: (1) Establish procedures regarding the identification of prototypes at the time of their importation into the United States; and (2) establish procedures regarding the sale of prototypes as scrap, waste, or for recycling, after their intended use in product development, testing, and evaluation, provided that all applicable duties were tendered following the sale, at the rate of duty in effect for such scrap, waste, or recycled materials at the time of importation of the prototype articles. These latter procedures relating to the sale of the used prototypes also included prototypes and parts of prototypes that were incorporated into other products that were sold as scrap, waste, or recycled materials.

Discussion of Comments

Twelve commenters responded to the notice of proposed rulemaking. A description of the issues that are raised by these commenters together with CBP's response to these issues is set forth below.

General; Duty-Free Entry

Comment: Proposed § 10.91 does not create simplified procedures and impose only minimal burdens, as Congress intended in enacting the PDTA, regarding the entry of prototype articles for use under HTSUS subheading 9817.85.01, and the possible recovery and sale of the used prototypes thereafter as scrap, waste, or for recycling.

CBP Response: CBP disagrees. It is CBP's view that the proposed procedures as further developed in this final rule will efficiently and expeditiously promote product development and testing in the United States, as contemplated under the PDTA, while, at the same time, ensuring that the subject tariff provision is used only for the purposes intended, and that any duty that is due on the sale of scrap, waste or recycled material is correctly reported and paid, as the PDTA also requires.

Comment: The heading for proposed § 10.91 should add a reference to product evaluation and quality control as purposes for which prototypes may be entered duty-free under HTSUS subheading 9817.85.01.

CBP Response: CBP finds that this is unnecessary. Section headings and titles are nothing more than reference guides and cannot limit or restrict the plain meaning of the regulatory text itself. In accordance with the PDTA, § 10.91(b)(1) fully addresses the purposes for which prototype articles may be entered duty-free under HTSUS subheading 9817.85.01.

Comment: It is observed that proposed § 10.91 inadvertently omits a paragraph (d), although it does contain paragraphs (e) and (f).

CBP Response: While this observation is correct, CBP is adding a paragraph (d) in the final rule. The new paragraph (d) describes the obligations of an importer of a prototype to CBP regarding a used prototype if the used prototype is not sold. Because a paragraph (d) is added, paragraphs (e) and (f) in proposed rule § 10.91 may retain their respective designations. However, because the proposed rule incorrectly cross-referenced paragraph (d) in § 10.91(b)(2)(ii) and § 10.91(c)(3), these cross-references are corrected in the final rule.

Comment: Proposed § 10.91(a) should provide that goods entered as prototypes under HTSUS subheading 9817.85.01 may be exported or scrapped prior to being used for the required purposes.

CBP Response: CBP disagrees. One of the purposes of the PDTA was to encourage the trade to do its testing and research in the United States without having to pay duty. Accordingly, CBP believes that goods that benefit under the PDTA must be used for testing and research. Proposed § 10.91(d) reflects this.

Comment: Proposed § 10.91(a)(1) should include specific guidelines for the preparation of the CF 7501 (now CBP Form 7501) when an importer is entering prototypes under HTSUS subheading 9817.85.01. In particular, no other HTSUS subheading should be required on the CBP Form 7501.

CBP Response: CBP disagrees that this regulation needs to include specific guidelines. The statistical note to Chapter 98, HTSUS, provides sufficient guidance. In addition, operational instructions will be issued covering all aspects of the preparation of the CBP Form 7501 for articles sought to be entered, duty-free, as prototypes under HTSUS subheading 9817.85.01.

Importer Declaration; Proof of Actual Use; Liquidation of Entry

Comment: Proposed § 10.91 should include specific requirements regarding the certification of the prototypes, such as a statement from the importer indicating that the material is for testing or evaluation under HTSUS subheading 9817.85.01.

CBP Response: CBP believes that § 10.91(a)(2)(i) will adequately address this issue in the context of the importer declaration.

Comment: It is pointed out that proposed § 10.91(a)(2) does not make any provision for the liquidation of a prototype entry under HTSUS subheading 9817.85.01.

CBP Response: CBP agrees that a time frame for liquidation of a prototype entry should be provided, especially in relation to § 10.91(a)(2)(ii), which authorizes the port director to request proof of actual use. In this respect, proposed § 10.91(a)(2)(ii) is amended in this final rule to provide that liquidation of the entry will be extended until the requested proof of actual use is received, or until the three-year period from the date of entry allowed for its receipt has expired; and that if proof of actual use is requested and not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article.

Comment: It is contended, under proposed § 10.91(a)(2)(ii), that the PDTA does not envision permitting the port director to request proof of actual use of the articles following their entry under HTSUS subheading 9817.85.01, and that CBP should not impose such a requirement. It is declared that the life of a prototype may easily span many years and that this would be inconsistent with requiring proof of use, which must usually be submitted within three years of the date of entry. One company asked that it be specifically exempted from any requirement to submit proof of actual use of the articles following entry.

CBP Response: CBP believes that it has the discretion to ask for proof of actual use under HTSUS subheading 9817.85.01. To be entitled to duty-free entry under that HTSUS subheading, the imported articles must qualify as prototypes that are to be used exclusively for development, testing, product evaluation or quality control purposes. In this latter vein, CBP has a responsibility and an obligation under the PDTA to follow up, on occasion, and require post-entry proof of actual use as specified in § 10.91(a)(2)(ii), in order to effectively monitor and ensure the proper employment of this tariff provision for the purposes intended. To this end, the port director is accorded the discretion to require such proof in those cases where it is believed to be warranted.

In those instances where the port director requests proof of actual use, while such proof of use must be given to CBP within three years of the date of entry, the prototype may, of course, continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. Proposed § 10.91(a)(2)(ii) is modified in this final rule to make this clear. Also, in relation to this, proposed § 10.91(a)(2)(ii)(A) is

recast in this final rule to provide that the proof of use, if requested, must include a description of the use that is being and/or that has been made of the articles so as to enable the port director to confirm that the articles have been entitled to entry as claimed.

Comment: Proposed § 10.91(a)(2)(ii) should make clear what type of statements would be acceptable for the proof or declaration of actual use. Also, the statement required in proposed § 10.91(a)(2)(ii)(B) that prototype articles not be put to any other use than as specified in HTSUS subheading 9817.85.01 seems contradictory in that the articles may be sold for use as scrap, waste, or for recycling under the PDTA.

CBP Response: CBP agrees in part. To further sharpen the focus of this provision, proposed § 10.91(a)(2)(ii)(B) is revised in this final rule to reflect that the prototype articles may not be put to any other use than as specified in HTSUS subheading 9817.85.01 after their entry or withdrawal from warehouse for consumption and prior to the completion of their use under HTSUS subheading 9817.85.01. Further, a reference to paragraphs (c) and (d) is added to § 10.91(a)(2)(ii)(B) in this final rule, indicating the permissible dispositions to which the articles may be subject following the completion of their use as prescribed in HTSUS subheading 9817.85.01.

As thus revised, CBP finds that § 10.91(a)(2)(ii)(A)–(C) sets forth the information required for the proof (declaration) of actual use with ample clarity and detail, and, along these same lines, proposed § 10.91(e)(1) is changed in this final rule to reference those records which would be necessary to support the proof of actual use.

Comment: Proposed § 10.91(a)(2)(ii)(C) provides that a declaration of actual use must include a statement that neither the articles nor any parts of the articles will be sold, or be incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01. This paragraph seems unnecessary in light of proposed § 10.91(a)(2)(ii)(B), which provides that the declaration of actual use must also include a statement that articles are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.95.01.

CBP Response: CBP disagrees. The statement required in § 10.91(a)(2)(ii)(C) represents an acknowledgment by the importer that the prototype articles may not be sold after importation and prior to their use as prototypes under HTSUS subheading 9817.85.01. A sale of the prototype articles does not constitute a use of those articles as contemplated under § 10.91(a)(2)(ii)(B).

Articles Classifiable as Prototypes Under the PDTA

Comment: Proposed § 10.91(b)(1) should be revised essentially to state that an article may be presumed to be entitled to duty-free entry as a prototype under HTSUS subheading 9817.85.01, if the article is otherwise eligible for entry under a temporary importation bond (TIB) pursuant to HTSUS subheading 9813.00.30 (articles intended solely for testing, experimental or review purposes).

CBP Response: CBP disagrees. Articles that may be entitled to free entry as prototypes under HTSUS subheading 9817.85.01 are defined in U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS. This definition is essentially mirrored in § 10.91(b)(1). Not all articles entitled to entry under TIB pursuant to HTSUS subheading 9813.00.30 would necessarily meet the stated definition for ''prototypes,'' as required for duty-free entry under HTSUS subheading 9817.85.01.

Comment: Proposed § 10.91(b)(1) should expressly state that prototypes may encompass articles from all industries, and are not restricted to articles of certain industries.

CBP Response: CBP agrees. The introductory text of proposed § 10.91(b)(1) is changed in this final rule to affirm that articles classifiable as prototypes under HTSUS subheading 9817.85.01 may encompass articles that pertain to any industry as long as such articles meet the requirements set forth in § 10.91(b)(1)(i) and (b)(1)(ii).

Comment: The definition of prototypes should be revised to show that certain motor vehicles and parts of motor vehicles would qualify as ''original'' articles under proposed § 10.91(b)(1). Additionally, concerning proposed § 10.91(b)(1)(i), it is suggested that a definition be added for the term ''preproduction'' to explicitly include research and development efforts expended on prototypes that may never result in commercial production; and that the phrase ''development, testing, product evaluation or quality control'' be further defined to include, among other things, ''manufacturing of the imported [prototype] articles with any foreign or domestic materials, and further processing.''

CBP Response: CBP is of the opinion that the definition of prototypes in U.S. Note 6(a) to subchapter XVII, chapter 98, HTSUS, as adopted in § 10.91(b)(1)(i) and (b)(1)(ii), should not be further expanded within the framework of this rulemaking. In this regard, whether given merchandise or particular activities or operations would fall within the scope of the definition for prototypes under the PDTA would more suitably be determined on a case-by-case basis as the need arises, taking into account the precise facts and circumstances of each case, through the administrative ruling process in accordance with the requirements of part 177, CBP Regulations (19 CFR part 177).

Comment: In proposed § 10.91(b)(2)(i), the importation of prototypes is limited to noncommercial quantities based on industry practice. The exact limits on the numbers of prototypes that may be imported should be included in the regulation.

CBP Response: CBP disagrees. It is not possible to establish rigid limitations on the numbers of prototypes that may be entered under HTSUS subheading 9817.85.01, in view of the multifarious industries potentially affected and the myriad purposes among those industries for which prototypes might be used in testing, evaluation, product development or quality control. In certain cases, an entry may be rejected if CBP should conclude that an importer seeks to enter a commodity under HTSUS subheading 9817.85.01 in numbers that are considered to be excessive in light of the purposes intended and based on the practice of the specific industry involved.

Comment: Proposed § 10.91(b)(2)(ii) should be revised to provide that the general restriction on the sale of prototypes or parts of prototypes after their importation into the United States does not apply to sales for export. It is stated that the same principle applies in the case of temporary importations under bond (TIBs).

CBP Response: CBP believes that it is sufficient in the context of this rulemaking to generally restate the prohibition imposed in U.S. Note 6(b)(ii) to subchapter XVII, chapter 98, HTSUS, on the sale of prototypes or parts of prototypes into the commerce of the United States after their importation into the United States, including their incorporation into other products that are sold. The prohibition on the sale of prototypes or parts of prototypes does not apply to sales for export.

Analogously, the TIB provisions and attendant regulations are to the same effect. Specifically, articles entitled to entry under TIB may not be imported for sale or for sale on approval (U.S.

Note 1(a) to subchapter XIII, chapter 98, HTSUS); and the implementing CBP Regulations for TIBs merely reiterate this requirement (§ 10.31(a)(3)(iii), CBP Regulations (19 CFR 10.31(a)(3)(iii))).

Comment: Clarification is sought as to proposed § 10.91(b)(2)(iii) (''Articles excluded from being prototypes''), which excludes articles from being classified as prototypes if they are subject to quantitative restrictions, antidumping orders or countervailing duties. It is asked whether this provision would exclude all textile and apparel products, as opposed to those that are in fact subject to quantitative restrictions at the time of entry.

CBP Response: Based upon U.S. Note 6(c) to subchapter XVII of chapter 98, HTSUS, articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are precluded from being classifiable as prototypes entitled to free entry under HTSUS subheading 9817.85.01. Proposed § 10.91(b)(2)(iii), entitled, ''Articles excluded from being prototypes,'' is revised in this final rule to make this clear, and, furthermore, for purposes of editorial integrity, the provision is redesignated in this final rule as § 10.91(b)(2)(iv). Also, the introductory text of proposed § 10.91(b)(2) is revised in this final rule to add a reference to U.S. Note 6(c).

Sale of Prototypes Following Use; Alternative Dispositions

Comment: It is asserted, in connection with proposed § 10.91(c), that articles imported as prototypes under HTSUS subheading 9817.85.01 do not have to be sold as scrap, waste or for recycling; that such articles may instead be exported, destroyed, donated to charity, otherwise given away to another party, or be retained and/or put to any other use by the importer. It is suggested that § 10.91 should make reference to these possible alternative dispositions of the articles, and state that such alternative dispositions of the used prototype articles need not be reported to CBP.

CBP Response: CBP agrees. Except for sale, section 1434(b) of the PDTA is not concerned with any other disposition of the prototypes following their use pursuant to HTSUS subheading 9817.85.01. Hence, other than sale to the extent authorized under section 1434(b), no other disposition of the used prototype articles need be reported to CBP. A paragraph (d) is added to proposed § 10.91 in this final rule to address this issue.

Comment: With respect to proposed § 10.91(c), the regulation should set out a comprehensive definition of recycling.

CBP Response: CBP has determined, as with the definition for prototypes discussed previously, that the meaning of recycling for purposes of the PDTA would more aptly be elucidated on a case-by-case basis through the administrative ruling process pursuant to part 177, CBP Regulations (19 CFR part 177). The concept of recycling may have different meanings depending upon the merchandise concerned or the particular industry involved.

Comment: Under proposed § 10.91(c)(1), the provision that the used prototypes or parts may be sold as scrap, waste, or for recycling upon payment of applicable duty appears to erroneously imply that duty must be paid before the articles may be sold.

CBP Response: To avoid this misperception, proposed § 10.91(c)(1) is revised in this final rule to make clear that duty is payable after the sale of the used prototypes or their parts. Furthermore, in § 10.91(c)(1), a reference is added in this final rule to § 10.91(c)(3), which sets forth the timing and the manner in which the applicable duty must be paid.

Comment: Proposed § 10.91(c)(2) should not require the submission of a notice of sale if the used prototype that is sold as scrap, waste, or for recycling is not subject to any duty.

CBP Response: CBP disagrees. The report of sale under § 10.91(c)(2) is needed so that CBP may readily confirm that the used prototype material has been sold as scrap, waste, or for recycling, as authorized under the PDTA, and that the importer is correct in concluding that the scrap, waste or recycled material that is sold is duty-free.

For editorial consistency, the last sentence of proposed § 10.91(c)(2) is recast in this final rule to advise that the notice of sale, if applicable, should not be submitted to CBP prior to the submission of proof of actual use, in the event that such proof should be requested by the port director; likewise, the reference to paragraph (c)(1) in the last sentence of proposed § 10.91(c)(2) is changed in this final rule to paragraph (a)(2)(ii).

Comment: Proposed § 10.91(c)(2) and (c)(3) should be amended to allow the notice of sale to be filed quarterly, instead of within 10 business days of each sale. A requirement that a separate notice of sale be filed for each prototype or part of a prototype that is scrapped or recycled and subsequently sold would impose an undue burden on the importer. At the same time, lengthening the reporting period would have no appreciable impact on customs revenue since most scrap, waste and recycled materials are duty-free.

CBP Response: CBP agrees. Paragraphs (c)(2) and (c)(3) of proposed § 10.91 are changed in this final rule to permit an importer to file a blanket notice of sale covering all sales of prototypes and parts that occur during a quarterly (3-month) calendar period. This blanket notice must be filed within 10 business days following the end of the related quarterly calendar period in which the sale(s) occurred.

Comment: A question is posed as to whether the notice of sale in proposed § 10.91(c)(3) constitutes a new entry, an amended entry, or a voluntary disclosure.

CBP Response: The notice of sale is neither an import entry, nor is it a voluntary disclosure. The notice of sale is basically the required report that is made to CBP regarding those prototypes and parts of prototypes that are sold as scrap, waste, or for recycling following their use under HTSUS subheading 9817.85.01. The employment of an import entry form (a CBP Form 7501), modified as appropriate, as provided in § 10.91(c)(3), is simply a convenient administrative means for making the required report of sale to CBP.

Comment: It is asked, regarding proposed § 10.91(c)(3)(I), whether the description requested by CBP of the condition of a prototype following its use for the purposes specified in HTSUS subheading 9817.85.01 relates to an article immediately following its use as a prototype or the article after it has been scrapped (*i.e.*, crushed and shredded).

CBP Response: CBP is interested in any damage, degradation or deterioration to the prototype articles resulting from their use for the specified purposes and resulting from any other cause before their sale as scrap, waste or for recycling. Proposed § 10.91(c)(3)(i) is thus clarified in this final rule. Also, a corresponding change is made to proposed § 10.91(e)(2) in this final rule pertaining to the valuation of the used prototypes or their parts for purposes of proper duty assessment.

Entry Bond; Liquidated Damages for Failure To Report Sale/Pay Duty

Comment: Under proposed § 10.91(c)(4), the failure to file a notice of sale or to deposit appropriate duty following the sale of a used prototype as scrap, waste, or for recycling constitutes a breach of the importer's entry bond that will result in the assessment of liquidated damages under the bond. The question is presented as to what action CBP would take, for example, assuming the applicability of 19 U.S.C. 1504(b),

should the import entry of a prototype article be liquidated by operation of law (4 years from the date of entry), with the underlying import bond being cancelled, before the used prototype article is sold as scrap, waste, or for recycling.

CBP Response: CBP has decided to delete proposed § 10.91(c)(4) in this final rule. The import entry bond referred to in proposed § 10.91(c)(4) covers the performance of those conditions (19 CFR 113.62(h)) that are associated with the duty-free entry of a prototype as defined in the PDTA that is to be used exclusively under HTSUS subheading 9817.85.01. As such, the duty-free entry of the prototype under HTSUS subheading 9817.85.01 is not concerned with or conditioned upon any liability for duty that might thereafter accrue pursuant to section 1434(b) of the PDTA due to the subsequent sale of the prototype as scrap, waste, or for recycling. In sum, the payment of applicable duty on scrap, waste or recycled material under the PDTA is an entirely separate and distinct transaction that is not subsumed within the duty-free entry of the prototype article.

Consequently, since duty to the extent payable on scrap, waste, or recycled material that is sold under section 1434(b) of the PDTA would not be assessed or collected under the import entry for the prototype, liquidated damages under the associated import entry bond would not apply with respect to such a sale.

Recordkeeping Requirements

Comment: In proposed § 10.91(e)(1), the record retention period for documents supporting the notice of sale of a used prototype as scrap, waste or for recycling should be five years from the date of the entry of the prototype article under HTSUS subheading 9817.85.01.

CBP Response: CBP disagrees. As explained above, the possible sale of the used prototype as scrap, waste, or recycled material is not related to the entry of the prototype under HTSUS subheading 9817.85.01. Should a sale of the used prototype as scrap, waste, or for recycling in fact occur, § 10.91(e)(1) mandates that records supporting the notice of sale be retained for five years from the date of filing the notice of sale in complete and proper form under § 10.91(c)(3). This is governed by § 163.4(a), CBP Regulations (19 CFR 163.4), which is referenced in § 10.91(e)(1).

Comment: Proposed § 10.91(e)(2) should make clear that the market value of any prototypes sold as scrap, waste, or for recycling will be based upon their selling price.

CBP Response: Section 10.91(e)(2) already makes this amply clear.

Conversion of TIB Entry to Duty-Free Prototype Entry

Comment: Proposed § 10.91(f) should be expanded to permit temporary importation bond (TIB) entries under HTSUS subheading 9813.00.05 to be converted to duty-free entries under HTSUS subheading 9817.85.01.

CBP Response: CBP disagrees. Section 1435(2) of the PDTA expressly allows only TIB entries under HTSUS subheading 9813.00.30 to be converted to duty-free entries under HTSUS subheading 9817.85.01, if those TIB entries otherwise qualify for such conversion.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Regulatory Flexibility Act and Executive Order 12866

This final rule amends the CBP Regulations to implement the terms and requirements of the PDTA, which went into effect on November 9, 2000. These regulations benefit the public by allowing the duty-free importation of prototypes that are to be used exclusively for development, testing, product evaluation or quality control purposes, thereby promoting such activities in the United States, rather than overseas. Accordingly, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities. Nor do these regulations meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information encompassed within this final rule document have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1651–0032 (Importers of merchandise subject to actual use provisions); and 1651–0038 (Proof of use for duty rates dependent on actual use). These collections encompass a claim for duty-free entry for prototype articles imported for use exclusively for development, testing, product evaluation or quality control purposes. This final rule does not present any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Part 178, CBP Regulations (19 CFR part 178), containing the list of approved information collections, is revised to make reference to the new § 10.91.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 10

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

19 CFR Part 178

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

Amendments to the Regulations

■ Parts 10 and 178, CBP Regulations (19 CFR parts 10 and 178), are amended as set forth below.

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

■ 1. The general authority citation for part 10 continues to read as follows, and the specific sectional authority for § 10.91 is added in appropriate numerical order to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Section 10.91 also issued under Pub. L. 106–476 (114 Stat. 2101), sections 1434, 1435;

* * * * *

■ 2. Part 10 is amended by adding after § 10.90 a new center heading entitled ''Prototypes'' followed by a new § 10.91 to read as follows:

Prototypes

§ 10.91 Prototypes used exclusively for product development and testing.

(a) *Duty-free entry; declaration of use; extension of liquidation*—(1) *Entry or*

withdrawal for consumption. Articles defined as ''prototypes'' and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on CBP Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) *Importer declaration.* (i) *Entry accepted as declaration.* Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01 may be accepted by the port director as an effective declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) *Proof (declaration) of actual use.* If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, executed and dated by the importer. The title of the party executing the proof of actual use must be set forth. If proof of actual use is requested, the importer must provide it within three years after the date the article is entered or withdrawn from warehouse for consumption. Liquidation of the related entry may be extended until the requested proof or declaration of actual use is received or until the three-year period from the date of entry allowed for the receipt of such proof has expired. While requested proof of use must be given to CBP within three years of the date of entry, the prototype may continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. If requested proof of use is not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by CBP, and must include the following:

(A) A description of the use that is being and/or that has been made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles have not and are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.85.01 (also see paragraphs (c) and (d) of this section concerning the disposition(s) to which the articles may be put following their use under HTSUS subheading 9817.85.01); and

(C) A statement that the articles or any parts of the articles have not been and are not intended to be sold, or incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (*see* paragraph (b)(2)(ii) of this section).

(b) *Articles classifiable as prototypes*— (1) *Prototypes defined.* In accordance with U.S. Note 6(a) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the term ''prototypes'' means originals or models of articles pertaining to any industry that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and

(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) *Additional requirements.* In accordance with U.S. Note 6(b) and (c) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the following additional restrictions apply to articles that may be classified as prototypes:

(i) *Importations limited.* Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) *Sale prohibited after entry and prior to use.* Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold into the commerce of the United States, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, except that, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (c) of this section.

(iii) *Articles subject to laws of another agency.* Articles that are subject to licensing requirements, or that must comply with laws, rules or regulations administered by an agency other than CBP before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iv) *Articles excluded from being prototypes.* Articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) *Sale of prototype following use.* (1) *Sale.* Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. If sold as scrap, waste, or for recycling, applicable duty must be paid on the prototypes or parts as provided in paragraph (c)(3) of this section, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) *Notice of sale required.* If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. A notice, in the manner authorized in paragraph (c)(3) of this section, must be submitted in connection with the sale, whether or not duty is payable. The notice should not be submitted prior to the submission of proof of actual use, should such proof of actual use be requested by the port director (*see* paragraph (a)(2)(ii) of this section).

(3) *Form and content of notice; tender of duty.* While no particular form is required for the notice of sale, a consumption entry (CBP Form 7501), appropriately modified, or an electronic equivalent as authorized by CBP, may be used for this purpose. The notice may be a blanket notice covering all those sales described in paragraph (c)(2) of this section that occur over a quarterly (3-month) calendar period. Such notice must be filed within 10 business days of the end of the related quarterly period in which the sale(s) occurred. If an article sold is dutiable,

the payment of any duty due must be forwarded together with the notice (*see* paragraph (c)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (*see* § 24.25 of this chapter). The notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype; the consumption entry number under which it was imported; a copy of the declaration of actual use, if proof of actual use was requested under paragraph (a)(2)(ii) of this section; and a detailed description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use and/or otherwise resulting to the article from any other cause prior to its sale for scrap, waste, or recycling;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(d) *Prototypes not sold following use.* As to those prototypes or parts of prototypes that, after having been used as prescribed under HTSUS subheading 9817.85.01, are disposed of otherwise than by sale (*see* paragraph (c)(1) of this section), there is no requirement that the importer notify CBP of any such alternative disposition. Nor are there any dutiable consequences that ensue from any disposition of the merchandise after the merchandise's use under HTSUS subheading 9817.85.01 other than sale to the extent authorized under paragraph (c)(1) of this section.

(e) *Recordkeeping; retention and production*—(1) *Recordkeeping.* The importer must be prepared to submit to the CBP officer, if requested, any information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use, if the declaration of use was requested under paragraph (a)(2)(ii) of this section, and the notice of sale, if applicable under paragraph (c)(3) of this section. The notices, together with any related supporting evidence, may be subject to such verification as the port director reasonably deems necessary. Supporting documentary evidence must be made available to the CBP officer, upon request, for a period of five years (*see* § 163.4(a) of this chapter) from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale. The supporting records must be made available to the CBP officer upon request in accordance with § 163.6 of this chapter.

(i) Documents supporting the proof (declaration) of actual use must:

(A) Establish that the identity and description of the prototype article is the same article that the consumption entry was made for under subheading 9817.85.01, HTSUS; and

(B) Describe the circumstances of the use of the article; the operations, testing, review, manipulation, experimentation, and/or other exercises that are being and/or that have been conducted in connection with the prototype; and the location, such as the plant or production facility, where these activities occurred, sufficient to demonstrate that the purposes enumerated in HTSUS subheading 9817.85.01 are taking and/or have actually taken place.

(ii) Documents supporting the notice of sale must establish that:

(A) The identity of the prototype sold is the same article for which a consumption entry was made under subheading 9817.85.01 HTSUS when it was imported, and that the article was in the condition described in the notice of sale;

(B) The article was sold to the party identified in the notice of sale;

(C) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype is accurate;

(D) The date that the prototype was originally imported for consumption, and the corresponding rate of duty in effect at the time for the applicable HTSUS subheading; and

(E) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section) as claimed in the notice of sale is accurate.

(2) *Relevant value for used prototype or parts sold.* For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The relevant value should take into consideration any damage, degradation or deterioration to the prototypes or parts resulting from their use as a prototype and/or otherwise resulting to the articles from any other cause prior to their sale as scrap, waste, or for recycling. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) *Articles admitted under TIB*—(1) *Duty-free entry available.* Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for ''prototypes'' in paragraph (b) of this section (U.S. Note 6(a) to subchapter XVII, chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) *Procedure for converting TIB entry to duty-free entry*—(i) *Importer request.* The importer must submit a written request, or an electronic equivalent as authorized by CBP, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) *Action by CBP.* CBP will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the port director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the port director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

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

■ 2. Section 178.2 is amended by adding the following in appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB Control No.
* * *	* * * * * * *	*
§ 10.91	Importers of merchandise subject to actual use provisions; proof of use for duty rates dependent on actual use.	1651–0032 and 1651–0038
* * *	* * * * * * *	*

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: October 27, 2004.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–24326 Filed 11–1–04; 8:45 am]

BILLING CODE 4820–02–P

POSTAL SERVICE

39 CFR Part 111

Priority Mail Flat-Rate Box

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the *Domestic Mail Manual* (DMM) standards adopted by the Postal Service to implement the Priority Mail flat-rate box experiment pursuant to the October 27, 2004, Decision of the Governors of the Postal Service approving the Recommend Decision of the Postal Rate Commission in its Docket No. MC2004–2. The recommended decision is based on the Stipulation and Agreement that represented a negotiated settlement of the issues in that docket.

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on November 20, 2004.

FOR FURTHER INFORMATION CONTACT: Rick Klutts, 202–268–7268.

SUPPLEMENTARY INFORMATION: The Postal Service is conducting the Priority Mail flat-rate box experiment to enhance customer convenience through the introduction of two flat-rate box options for Priority Mail. Many Postal Service customers, especially individual consumers and small businesses, are seeking simplicity and convenience when sending a package. Much like the Priority Mail flat-rate envelope offered since 1991, the flat-rate boxes will afford customers a single, predetermined rate, regardless of the actual weight or destination of the mailpiece. The simplified transaction with these two flat-rate boxes represents an opportunity for the Postal Service to enhance value for customers.

New *Domestic Mail Manual* (DMM) G995 contains rates, eligibility criteria, standards, and classification information about the two-year Priority Mail flat-rate box experiment.

For the reasons discussed above, the Postal Service adopts the following amendments to the *Domestic Mail Manual,* which is incorporated by reference in the *Code of Federal Regulations* (see 39 CFR 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the DMM as set forth below:

G General Information

* * * * *

G900 Experimental Classification and Rate Filings

* * * * *

[Add new G995 to read as follows:]

G995 Priority Mail Flat-Rate Box

1.0 ELIGIBILITY

1.1 Description

The standards in G995 apply to each addressed USPS-produced Priority Mail flat-rate box (Postal Item Numbers: OFRB1 and OFRB2).

1.2 Rate Application

Each USPS-produced Priority Mail flat-rate box is charged the experimental Priority Mail flat-rate box rate regardless of weight or destination.

1.3 Basic Standards

Any amount of mailable material can be mailed in a USPS-produced Priority Mail flat-rate box. Only USPS-produced Priority Mail flat-rate boxes are eligible for the flat-rate box rate. All other applicable Priority Mail standards apply.

1.4 Package Preparation

The box flaps must be able to close within the normal folds. Tape may be applied to the flap and seams for closure or to reinforce the box, provided the design of the box is not enlarged by opening the sides of the box and taping or reconstructing the box in any way.

2.0 RATE

2.1 Priority Mail Flat-Rate Box Rate

The flat-rate box rate is $7.70. This initial rate is subject to change in a future rate proceeding.

2.2 Postage Payment Methods

Postage may be paid with postage stamps, meter stamps, Information-based indicia (IBI) meter, PC Postage system, or permit imprint, providing all the standards for the postage payment method are met.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–24555 Filed 11–1–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[GA–112L–2004–1–FRL–7832–7]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Georgia Environmental Protection Division