

Dated: August 13, 1998.

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*Assistant Commissioner (Administration),
Bureau of the Public Debt.*

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DEPARTMENT OF THE TREASURY

Customs Service

Revision and Expansion of National Customs Automation Program Test of Account-Based Declaration Prototype

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

ACTION: General notice.

SUMMARY: This document is a replacement of a notice published in the **Federal Register** on March 27, 1997, which announced Customs' plan to conduct an account-based prototype (NCAP/P) under the National Customs Automation Program (NCAP). This notice broadens the eligibility requirements for participation in the NCAP/P, incorporates enhancements to reconciliation (based on the February 6, 1998 announcement of the ACS Reconciliation Prototype) and clarifies the statement process. This notice also outlines the development and evaluation methodology to be used in the test and invites public comment on any aspect of the planned test.

With this notice, Customs is also inviting additional importers to apply to participate in the NCAP/P in accordance with the eligibility requirements specified in this notice. Applicants that have already been accepted as participants in the NCAP/P based on the 3/27/97 NCAP/P notice need not re-apply. All participants in the NCAP/P, including previously accepted applicants, are required to follow all the operational procedures described in this notice, e.g., procedures on the account-based import declaration process, reconciliation, remote location filing, and maintenance of account information, and are bound by the terms and conditions of this notice.

The NCAP/P will become operational under a staged implementation program. Implementation of the NCAP/P will be as follows: (1) Cargo release, (2) Cargo release with examination, (3) Entry summary acceptance and processing, and periodic statement processing, and (4) Reconciliation.

DATES: The cargo release stage of the NCAP/P commenced on April 27, 1998. The NCAP/P will be operational for up to three years, with evaluations of the prototype occurring periodically.

Applications to participate in the test may be submitted throughout the duration of the prototype. Priority review will be given to applications received on or before September 18, 1998. Public comments on any aspect of the planned test must be received on or before September 25, 1998. All comments received will be part of the public record and made available to third parties upon request.

ADDRESSES: Applications and comments should be addressed or faxed to Don Luther, U. S. Customs Service, 1300 Pennsylvania Avenue NW, Room 5.2A, Washington, DC 20229, fax number (202) 927-1096.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding eligibility of specific importers contact: Margaret Fearon at (202) 927-1413. For questions on reconciliation contact: Don Luther at (202) 927-0915. For questions on statement processing: contact Tim Raeck at (317) 298-1520, extension 1445. For questions on violation billing: contact Jim Gleason at (202) 927-2995. For questions on other aspects of the Account-Based Declaration Prototype contact: Daniel Buchanan at (617) 565-6236.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (the Mod Act). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411-1414), which define and list the existing and planned components of the NCAP (section 411), establish program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (section 414). Section 637 of the Act amends Section 484 of the Tariff Act of 1930 to establish a new subsection (b), entitled "Reconciliation" (19 U.S.C. 1484(b)). Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), provides for the testing of NCAP components. See, T.D. 95-21 (60 FR 14211, March 16, 1995). This test is established pursuant to that regulation.

A key element of Customs efforts to re-engineer its Trade Compliance process is a shift in emphasis from the traditional transaction-based approach

of ensuring compliance with import laws and regulations to an account-based approach, which addresses an importer's overall compliance through account management, process reviews, and audits. One feature of this approach is a new account-based declaration process. Customs is also developing a new commercial processing system, the Automated Commercial Environment (ACE), which is designed to support the new Trade Compliance processes. The account-based declaration prototype (NCAP/P) is being developed to provide the first operational demonstration of ACE capabilities for processing imports, integrating the new account-based import declaration process with other aspects of the Trade Compliance process and with selected features of NCAP elements of the Mod Act.

I. Development Methodology

The NCAP/P will be monitored by a Joint Prototype Team consisting of trade participants, Customs personnel, and other interested government agencies. This team will meet regularly throughout the prototype period at appropriate locations to set development milestones, monitor progress, resolve issues and evaluate program effectiveness. The development effort will be coordinated with other ongoing NCAP prototype programs such as Remote Location Filing and Reconciliation, and will be as consistent as possible with the overall direction of ACE development.

Potential participants should recognize that this is a prototype test of new processes. Data definitions and values and formats for electronic transmission of manifest, entry and commercial data will differ from those currently used in the Automated Commercial System (ACS). It is also important to note that development efforts undertaken for the NCAP/P may not meet the eventual requirements for programs as they are finally implemented in ACE.

The public is invited to comment on any aspect of the NCAP/P as described by this notice. All comments received will be part of the public record and made available to third parties upon request.

II. Eligibility Requirements

In order to be eligible for participation in the NCAP/P, an importer must:

A. Be participating or approved for participation in the Importer Compliance Monitoring Program (63 FR 20442) or be scheduled for, participating in, or, in the application, agree to undergo and cooperate fully with a Customs Compliance Assessment. At

the time the application is filed, if a Customs Compliance Assessment or other type of Customs audit is in progress, the importer must be fully cooperating and provide timely and accurate information and the resources necessary for Customs to conduct the Compliance Assessment or audit. If the importer is subject to a compliance improvement plan, the importer must be abiding by the terms and conditions of the plan;

B. For Southern border NCAP/P shipments, use carriers who participate in the Land Border Carrier Initiative Program (LBCIP). No importer may enter Southern border cargo transported by non-participant carriers;

C. Commit in the application to file or maintain a continuous bond with sufficient liability coverage which will be obligated upon release of each NCAP/P shipment. Participants who elect to reconcile entry summaries must have on file a rider along with the continuous bond, which will be obligated on the underlying entries and used to cover the Reconciliation. (See Section VIII below);

D. Be capable of and/or commit to arranging for timely and accurate electronic transmission to Customs of all data required in the NCAP/P declaration process, including data required to pre-identify parties and commodities involved in NCAP/P transactions, manifest and pre-release shipment data, additional data required to support physical examinations of cargo, entry summary data, detailed commercial data when requested, and reconciliation data. If an importer does not transmit electronic data for a particular shipment, Customs may exclude that shipment from NCAP/P processing; and

E. Be capable of and/or commit to arranging for timely electronic payment of applicable duties, taxes, fees, and interest.

Applications will be accepted from all volunteers; however, priority consideration will be given to:

F. Companies within the top 379 importers ranked by entered value (the top 379 represent approximately 50 percent of all imports by value);

G. Companies within the top 250 importers within any of Customs' Primary Focus Industry (PFI) categories, which are as follows:

1. Agriculture
2. Automotive
3. Communications—
Telecommunications, Advanced Displays, Board Level Products
4. Critical Components—Bearings, Fasteners

5. Footwear
6. Production Equipment
7. Steel
8. Textiles—Textile Products, Wearing Apparel; and

H. Companies that do not represent an unacceptable compliance risk.

III. General Requirements

For the NCAP/P, the following restrictions will be placed upon importers:

A. Importers must enter merchandise identified in the application as being from their typical commodities in their established lines of business and coming from pre-identified sellers and shippers;

B. Importers must enter only the merchandise identified in the application as being within a range of pre-identified commodities (classified at the 6-digit Harmonized Tariff Schedule (HTS) level);

C. Importers must only enter merchandise conveyed on trucks operated by carriers pre-identified by participants in the application;

D. Importers must enter merchandise for release into the commerce under a consumption entry at the port of arrival, and may not enter NCAP/P merchandise into a warehouse or Foreign Trade Zone, or as an in-bond entry;

E. Importers must enter merchandise at the ports of Laredo, Texas (Colombia Bridge only), or at Detroit or Port Huron, Michigan;

F. Importers may not enter merchandise in the NCAP/P if it is subject to antidumping or countervailing duty, quota, trade preference level or visa requirements, or pre-release reporting requirements imposed by other federal agencies;

G. No prohibited or embargoed merchandise will be permitted in prototype shipments; and

H. Importers are responsible for ensuring that ineligible merchandise is not included in NCAP/P shipments, and that all shipments aboard a conveyance are eligible for NCAP/P processing. Customs will exclude ineligible shipments from NCAP/P processing.

IV. Application

NCAP/P participants previously selected need not re-apply under this notice. Importers who wish to participate in the NCAP/P and have not yet been accepted must submit a written application that contains the following information:

A. Importer name, address and IRS employer identification number;

B. Names and addresses of all shippers for the NCAP/P;

C. Names and addresses of all sellers/vendors for the NCAP/P, and, for each

seller/vendor identified, a listing of all the 6-digit HTS numbers in which the commodities to be imported are classified;

D. The surety and surety code and the number of the continuous surety bond which will cover all cargo processed under NCAP/P procedures. If the applicant plans to reconcile their NCAP/P entry summaries, a commitment to file the bond rider prior to flagging underlying entry summaries for reconciliation, along with identification of the port in which the continuous bond and rider are filed must be included;

E. Names, addresses and Standard Carrier Alpha Codes of truck carriers who will be transporting NCAP/P shipments across the international borders. For Southern border carriers, the Carrier Initiative Program number must also be provided;

F. Names, addresses and filer codes of any customs brokers who will be filing data;

G. The approximate total number of entries per month expected to be processed at each of the following locations: Colombia Bridge, Laredo; Ambassador Bridge, Detroit; Windsor Tunnel, Detroit; and Blue Water Bridge, Port Huron;

H. Detailed description of anticipated issues (from the eligible issues listed in Section VIII of this Notice) and commodities for which the participant anticipates electing reconciliation; and

I. For applicants not participating in or approved for participation in the Importer Compliance Monitoring Program or not already scheduled for or participating in a Customs Compliance Assessment, a statement in which the applicant commits to undergo and cooperate fully with a Customs Compliance Assessment.

Customs will make admissibility determinations on NCAP/P shipments based on cargo examinations and the information supplied with the application, which shall serve as a pre-filed entry for NCAP/P purposes.

Importers who submit applications to participate in the NCAP/P will be notified in writing of their acceptance or rejection. If an applicant is selected for NCAP/P participation, Customs will assign the importer an NCAP/P Authorization Code. If an applicant is denied participation, the notification letter will include the reasons for that denial. Eligible importers whose initial applications are rejected may re-apply upon correction of the situation which led to the denial.

Preference in accepting applicants will be given to those who indicate that they plan to maintain an average of at

least 25 entries per month throughout the prototype period.

V. Maintenance of Account Information

Each entry filer participating in the NCAP/P must provide Customs with a range of entry numbers to be reserved for assignment by Customs to NCAP/P shipments. Entry filers may not assign these numbers to transactions, either for NCAP/P or for non-prototype entries.

Throughout the prototype period, participating importers must provide Customs with advance notification of any proposed changes in the information provided in the application. This notification will be considered an amendment to the application. Amendments must be submitted at least seven days prior to the arrival of any cargo that reflects the proposed changes. Participants must not enter any cargo referenced in an amendment before Customs has approved the amendment. By notification to the participating importer, Customs may reject any proposed change, e.g., use of a particular carrier, shipper, or seller, entry of particular merchandise under this prototype, etc. Customs will notify participants of the decision regarding proposed changes to the applications. If a participant's proposed changes are rejected, Customs will specify the reason for the rejection. The importer may re-submit proposed changes upon correction of the situation which led to the denial.

VI. Account-Based Declaration Process

The account-based declaration process is a fully electronic process that will base cargo examination decisions primarily on pre-filed account/entry information; thereby, minimizing the transaction data that needs to be transmitted to Customs prior to the release of cargo. Cargo examinations will also be performed on the basis of selectivity criteria and random compliance measurement sampling. This process will also permit reporting of detailed entry summary data on a monthly cycle, provide for payment of duties, taxes, and fees on a periodic statement cycle employing semi-monthly estimated payments and allow for reconciliation of summary data.

Cargo will be released and duties, taxes, and fees assessed on the basis of data transmitted to the NCAP/P system. For shipments processed in the NCAP/P, participants will not be required to provide parallel filing of ACS data or paper documents.

While various automatic notifications and back-up procedures will also be supported, the basic declaration flow

when the NCAP/P is fully implemented will be as follows:

A. The application, including any amendments, will serve as a pre-filed entry for NCAP/P purposes. A participating importer or authorized broker will electronically transmit data to Customs to provide timely and accurate identification of any proposed changes to the original application, e.g., changes in a participant's NCAP/P business partners or merchandise imported under the prototype. These changes must be provided at least seven days prior to the arrival of the referenced cargo.

B. Prior to arrival of cargo at the border, the carrier issuing the manifest or an authorized agent will electronically transmit to Customs basic manifest data: coded identification of the carrier; trip details; identification of drivers, the conveyance and other equipment; and an identifying number and the laden quantity for each shipment on the conveyance.

C. Also prior to arrival of the cargo at the border, data pertaining to each individual shipment must be electronically transmitted to Customs. This shipment data will include information generally found on freight bills, plus the NCAP/P Authorization Code assigned to the participating importer by Customs, and identification of the entry filer and the seller and buyer of the merchandise. This shipment data may be transmitted by the carrier issuing the manifest, an authorized agent acting on behalf of the carrier issuing the manifest, or the entry filer (i.e., either the importer of record or the importer of record's customs broker.)

D. Customs will assign an entry number to each shipment from the range of entry numbers provided in advance by each participating entry filer for that purpose. When a truck arrives at the border, shipments for which no physical examination of cargo is required will be released without additional data or documentation. For any shipment aboard that truck selected by Customs for physical examination of cargo, Customs will issue to the entry filer designated in the shipment data an electronic request for additional information. This request may be satisfied by transmission of either partial or complete entry summary and commercial data, as requested by Customs, plus packing data. The commercial data required for cargo examination, whether partial or complete, will be at the detailed line item level. Cargo will not be examined until this data is received by Customs.

E. The date of entry will be the date on which merchandise is released by Customs. The release will obligate the continuous bond identified in the prototype application of the importer whose NCAP/P Authorization Code is present in the shipment data.

F. If the participant uses a blanket flag to notify Customs of entry summaries subject to reconciliation, the flag must be received by Customs no later than seven working days prior to transmission of the first entry summary being flagged under the blanket.

G. For each shipment released during a calendar month, the entry filer must electronically transmit complete entry summary data to Customs on or before the filing deadline for that month. The filing deadline for each month will be the 10th calendar day of the following month, or, if the 10th falls on a weekend or holiday, the next business day. Entry summary data transmitted prior to this deadline will be considered provisional and may be replaced by the entry filer anytime before the deadline. All summaries filed on or before the deadline will be considered as filed on the deadline date. If the participant uses individual entry flags to notify Customs of entry summaries subject to reconciliation, such flags must be included in the transmission of the final entry summary data.

H. For any entry summary selected by Customs for data review, Customs will issue to the entry filer an electronic request for complete commercial data, unless such data was previously transmitted to support a cargo examination. This request must be satisfied by electronic transmission of a complete set of commercial data, as requested by Customs, plus packing data if specifically requested.

I. By virtue of 19 CFR 101.9, Customs may impose requirements different than those specified in the Customs Regulations; but only to the extent that such different requirements do not affect the collection of revenue. Consequently, in order to permit a different procedure to test the periodic deposit of estimated duties without adversely affecting the collection of revenue, participants must abide by the following procedures. Each participating importer will make semi-monthly preliminary estimated payments through an electronic medium. Preliminary estimated payments will be initiated electronically using Automated Clearinghouse (ACH) credit on the 15th and the last day of the month. If the 15th or the last day of the month falls on a weekend or holiday, the payment must be initiated the next business day. Under the prototype,

special electronic payment procedures will be utilized. The preliminary estimated payments will be based upon the following percentages: (a) the payment initiated on the 15th will be 75% of the estimated revenue due to Customs as a result of entry activity for the 1-15th of the month, (b) the payment initiated on the last day of the month will be 57% of the estimated revenue due to Customs as a result of entry activity from the 16th to the last day of the month. These percentages will be reviewed and may have to be adjusted to maintain revenue neutrality. Payment for the remaining balance will be initiated electronically on the 15th of the following month, and it is this date which will serve as the date of actual deposit of estimated duties and fees for purposes of assessing interest under 19 U.S.C. 1505. Customs will create two types of statements each month, one before and one after the monthly filing deadline. Each statement will list each importer's revenue NCAP/P activity at all locations for the reporting month, and will list entry summary revenue data that has been filed and amounts due.

J. Within the period of time prescribed for each issue, the entry filer must transmit an electronic Reconciliation to resolve each issue identified for reconciliation in the Notice of Intent. (See Section VIII below.)

VII. Remote Location Filing

Remote location filing allows participants to electronically file data for the entry of merchandise with Customs from any location in the United States regardless of the port designated in the entry for examination or the port of entry.

An NCAP/P participant will be voluntarily utilizing remote location filing if the electronic transmission of an entry, entry summary, commercial data (when required by Customs) and payment of duties, taxes, and fees is received from a participant not located in the port of arrival, which for purposes of this prototype will also be the port of entry and examination.

The designation of alternative locations for cargo examination will not be supported in the NCAP/P. All cargo examinations will be conducted at the port where the cargo first arrives in the United States.

VIII. Reconciliation

A. The Concept of Reconciliation

When certain information (other than that related to the admissibility of merchandise) is not determinable at the

time of entry summary, an importer may later provide Customs with that information on a Reconciliation. A Reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest. Upon liquidation of any underlying entry summary, any decision by Customs entering into that liquidation, e.g., classification, may be protested pursuant to 19 U.S.C. 1514. When the outstanding issue, e.g., value as determined by the actual costs, is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for reconciliation (i.e., the protest may not re-visit issues previously liquidated on the underlying entry summary).

Importers must be aware of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person concerned discloses the circumstances of a violation pursuant to the Customs Regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Reconciliation is the process by which an importer notifies Customs of undeterminable information, and by which the outstanding information is provided to Customs at a later date. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is undeterminable and will be provided at a later time.

B. Definitions

1. *Reconciliation*: The process which allows an importer to identify undeterminable information (other than that affecting admissibility) to Customs, and provide the outstanding information at a later date. The term "reconciliation" also describes the entry used to submit the outstanding information.

2. *Underlying entry summary*: A consumption entry summary flagged for reconciliation.

3. *Flagging an entry summary for reconciliation*: Providing Customs with a notice of intention to file a Reconciliation ("Notice of Intent"). The Notice of Intent will identify to Customs that an entry summary is subject to reconciliation for a defined issue(s). There are two ways an importer can flag an entry summary for reconciliation:

a. *Individual entry flagging*: At time of summary filing, the importer electronically inputs an indicator on

any entry summary which is subject to reconciliation. This indicator identifies the issue(s) subject to reconciliation.

b. *Blanket flag*: Prior to filing entry summaries subject to reconciliation, the importer notifies Customs of the importer of record number, the time period in which entry summaries are subject to reconciliation, and the issue(s) subject to reconciliation. Customs will input an electronic indicator on ALL entry summaries within the defined scope, which will identify them as being subject to reconciliation for the issue(s) indicated. Please note: Customs will determine at a later date if the blanket flag can include more specific parameters, e.g., HTS number, country of origin, etc.

4. *Entry-By-Entry Reconciliation*: A Reconciliation in which the revenue adjustment is specifically provided for each affected entry summary.

5. *Aggregate Reconciliation*: A Reconciliation filed with summarized data showing reconciled adjustments at an aggregate level. A list of the affected entry summaries is required, but the revenue change need not be broken out according to individual underlying entries. Aggregate Reconciliations may be used only where all adjustments covered by the Reconciliation result in absolute increases in duties, taxes, and fees. Drawback is not available and may not be requested on the increased/reconciled adjustment.

6. *Absolute increase*: Each underlying entry summary covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. Only absolute increases are eligible for Aggregate Reconciliations.

Examples: Where entry summaries A and B are both covered by a Reconciliation, the Reconciliation would have an Absolute Increase if the changes to both entry summaries would be increases or no changes. If A increased and B decreased, even if A's increase is greater than B's decrease, this is NOT an Absolute Increase. See Netting, below.

Note: This principle applies at the entry level rather than at the line level. That is, regardless of decreases on individual lines on entry A, as long as the total change for entry A resulted in an increase in duties, taxes, and fees, it could be considered part of an Absolute Increase.

7. *Netting*: Situations in which increases AND decreases resulted at the end of the reconciliation period. In any netting situation, the importer has the following options:

a. *File an Entry-By-Entry Reconciliation* to account for both the increases and decreases, or

b. File two Reconciliations: An Aggregate Reconciliation for all the increases and an Entry-By-Entry Reconciliation for all the decreases.

C. Description of the NCAP/P Reconciliation Component

1. Exclusive Means

Operating concurrent with the reconciliation component of the NCAP/P is a reconciliation prototype in ACS (see 63 FR 6257, dated February 6, 1998). Any party who elects to reconcile entries pursuant to 19 U.S.C. 1484(b) may only do so through the reconciliation component of the NCAP/P or the ACS Reconciliation Prototype. These prototypes will serve as the exclusive means to reconcile entries for (1) value, (2) classification on a limited basis, (3) merchandise entered under Harmonized Tariff Schedule of the United States (HTSUS) heading 9802, and/or (4) merchandise entered under the North American Free Trade Agreement (NAFTA). Outside of reconciliation, the only alternative post-entry, pre-liquidation adjustment will be to file a Supplemental Information Letter for each affected entry summary, with appropriate corrective data and duty tenders. (For information on the Supplemental Information Letter, see Automated Broker Interface (ABI) administrative message #97-0727, posted on 8/4/97, entitled "314 Day Liq Cycle—Trade Notice".) As always, importers retain the right to request extension of liquidation of entry summaries, as described in 19 CFR 159.12(a)(ii).

2. Notice of Intent

A notice of intention to file a Reconciliation ("Notice of Intent") identifies an undeterminable issue, transfers liability for that issue to a Reconciliation and permits the liquidation of the underlying entry summary as to all issues other than those which are transferred to the Reconciliation. By providing a Notice of Intent, an importer is requesting that a certain issue or group of issues be separated from the entry summary. The importer voluntarily requests and accepts that the issue(s) identified in the Notice of Intent remain open and outstanding. The importer remains responsible for filing a Reconciliation, and liable for any duties, taxes, and fees resulting from the filing and/or liquidation of the Reconciliation. The Notice of Intent creates an obligation on the importer to file the Reconciliation. Importers participating in this prototype will recognize that the liquidation of the underlying entry summaries pertains

only to those issues not identified by the importer on the Notice of Intent.

Only consumption entries may be filed in the NCAP/P system, and therefore, only consumption entries via the NCAP/P may be flagged for reconciliation under this prototype. The underlying entry summaries flagged for a Reconciliation may be filed at any port within the NCAP/P, including any combination of ports.

a. *Option: Individual Entry Flag.* During this prototype, the importer may "flag" the underlying entry summaries at time of summary filing via an electronic indicator, which will serve as the Notice of Intent.

b. *Option: Blanket Flag.* Importers may provide their Notice of Intent by filing a "blanket flag" in lieu of individual entry flags. The blanket flag will identify the Importer of Record number, range of dates in which the underlying entry summaries will be subject to reconciliation, and the issue(s) subject to reconciliation. (Customs will determine at a later date if additional parameters, such as HTS number, may be specified in the blanket flag.) This notification must be received by Customs no later than seven working days prior to transmission of the first entry summary being flagged under the blanket. Upon receipt of the blanket flag, Customs will automatically apply the above-mentioned electronic indicator to the entry summaries within the identified scope.

c. *Option: Retroactive Flag.* Customs is exploring the implementation of an option to retroactively flag entry summaries for reconciliation. A retroactive flag, if implemented, would enable the importer to request a Notice of Intent after filing and prior to liquidation of the entry summary. Retroactive flags would be requested on an individual entry basis, and would require approval by Customs. Customs will notify participants if this option is implemented.

3. Issues To Be Reconciled

The NCAP/P reconciliation component will allow the following issues to be flagged for reconciliation: value, HTSUS heading 9802, NAFTA, and classification on a limited basis.

a. *Value*—The reconciliation component of the NCAP/P is open to reconciliation of all value issues.

b. *HTSUS heading 9802*—The issue of 9802 includes the value aspect involved with this HTSUS provision, e.g., reconciling the estimated to actual costs.

c. *NAFTA*—Reconciliation may be used as a vehicle to file post-importation refund claims under 19 U.S.C. 1520(d). NAFTA Reconciliations

are subject to the obligations of 19 CFR Part 181, subpart D. The importer must possess a valid Certificate of Origin at the time of making a NAFTA claim. Presentation of the NAFTA Certificate of Origin to Customs is waived for the purposes of this prototype, but the filer must retain this document, which shall be provided to Customs upon request. The Certificate of Origin is part of the (a)(1)(A) list (19 U.S.C. 1508(a)(1)(A)), and covered by the recordkeeping provisions of the Customs laws and regulations. Filers are reminded that interest shall accrue from the date on which the claim for NAFTA eligibility is made (the date of the NAFTA Reconciliation) to the date of liquidation or reliquidation of the Reconciliation. The obligation to file a Reconciliation opened by the Notice of Intent applies to all Reconciliations, including NAFTA, even if the participant finally concludes it cannot file a valid 520(d) claim, in which instance the NAFTA Reconciliation would be filed with no change.

d. *Classification*—Classification issues will be eligible for reconciliation as long as the reconciled HTS classification falls within the pre-identified 6-digit HTS provisions provided on the participant's application. Generally, the exercise of reasonable care should ensure that Reconciliations do not result in a tariff shift outside the pre-identified HTS provisions. However, at the time such a tariff shift has been identified, the participant must immediately refrain from entering the merchandise classified outside the pre-identified HTS provisions in any future NCAP/P shipments. A participant may include this merchandise in future NCAP/P shipments only after submitting an application amendment with the proposed changes to HTS provisions and obtaining Customs approval of this amendment. The failure to identify merchandise not included in the original application or filed in amended applications in a timely manner may result in penalties, administrative sanctions and/or suspension from the prototype.

4. Filing of the Reconciliation

The continuous bond on the underlying entry summaries flagged for reconciliation will be used to cover the Reconciliation. Customs will accept no drawback claims on the underlying entry summaries until the Reconciliation is filed with duties, taxes, and fees deposited.

The following choices are for the type of Reconciliation filed. They are not conditioned on the method of flagging used. In other words, an importer can

flag entry summaries either individually or via a blanket application, and reconcile those entry summaries via an Entry-By-Entry or Aggregate Reconciliation.

a. Entry-by-Entry Reconciliation.

(1) This option can be used for all reconciliation adjustments, including refunds of duties, taxes, and fees.

(2) The revenue adjustment will be broken down to entry-by-entry detail for all underlying entry summaries.

(3) After the Reconciliation has been filed, drawback may be claimed against the underlying entry summaries and, if appropriate, the reconciled increase.

b. Aggregate Reconciliation.

(1) This option applies only to those situations which involve an absolute increase, i.e., each entry covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. If netting is involved to reach a net increase, this option does not apply. (See Definitions section above for more details.) For example, entry 123 covers product A. Entry 234 covers product B. An assist was provided for product A, which resulted in an increase in duty. The value of product B was affected by currency fluctuations, which resulted in a decrease in duty. An Aggregate Reconciliation cannot be filed to cover both entry 123 and entry 234. Remember, this restriction against netting applies only to netting between different entries. If entry 456 covers both products A and B, as long as entry 456 as a whole had an increase in duties, taxes, and fees, it may be included in an Aggregate Reconciliation.

(2) After the Reconciliation has been filed, drawback may be claimed against the underlying entry summaries, but may NOT be claimed against the reconciled increase. Furthermore, participants should be aware that duties, taxes, and fees paid on an Aggregate Reconciliation may only be refunded through adjustments to that Reconciliation on which the duties, taxes, and fees were paid, i.e., not through drawback or any other claims on the underlying entry summaries or a related Reconciliation (when two Reconciliations are filed on one entry summary.)

Example: The duty paid on the underlying entry summary is \$1,000, and the amount of the Aggregate Reconciliation adjustment is \$10,000. The \$1,000 paid at entry summary is eligible for a drawback refund. The \$10,000 reconciliation adjustment is not eligible for a drawback refund. By opting to file an Aggregate Reconciliation, all participants understand that they waive their ability

to claim drawback or transfer drawback rights for the amount of the reconciled increase.

(3) The Reconciliation will include a list of all underlying entry summaries, but will not require the revenue adjustment to be broken down by entry.

5. Filing of the Reconciliation—Grouping, Timeliness, and Location

Reconciliation is to be used to group entries together for a common, outstanding issue. Entry summaries flagged for reconciliation which have the same outstanding information should all be grouped on one Reconciliation, e.g., entry summaries flagged for reconciliation awaiting finalization of assist information should be grouped on one Reconciliation where the assist information is provided.

A Reconciliation of value, HTSUS heading 9802 and/or classification shall be filed within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. A Reconciliation may cover any combination of value, HTSUS heading 9802 and classification issues. Should the issues of value, HTSUS heading 9802 and/or classification on one entry summary be flagged for reconciliation, the participant shall address all those issues on the same Reconciliation.

A NAFTA Reconciliation must be filed within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation. NAFTA Reconciliations may not be combined with other issues, because of NAFTA's unique nature and different due dates, and so that Customs may expedite the processing of such refunds.

One underlying entry summary may have up to two Reconciliations, one for any combination of classification, HTSUS heading 9802 and/or value, and one for NAFTA. A Reconciliation which is not filed by the appropriate deadline will be handled as a liquidated damages claim for failure to file.

6. Effect of Reconciliation on Drawback

Inherent in the concept of reconciliation is the fact that, because certain issues are kept open pending filing of the Reconciliation, the information regarding these issues and the resulting liability for the duties, taxes, and fees previously asserted by the importer may change when the Reconciliation is filed. Customs will therefore not accept drawback claims or certificates on underlying entry summaries flagged for reconciliation until the Reconciliation is filed with all duties, taxes, and fees deposited. In the case of a drawback claim and a

reconciliation refund against the same underlying entry summaries, the importer is responsible for ensuring that a claim for a refund in excess of the duties paid is not filed with Customs and for substantiating how the drawback and reconciliation refund requests apply to different merchandise.

Since drawback is paid on a per-entry basis, reconciled adjustments filed with aggregate data are not eligible for drawback. As the adjustment made pursuant to an Aggregate Reconciliation is not connected to specific entry summaries, it would be impossible for Customs to ensure that those duties were indeed entitled to drawback, and/or that the duty for which the drawback was claimed had not been previously refunded on the underlying entry summary(ies).

7. Filing of Reconciliation—Bond Issues

Entry summaries flagged for reconciliation will require a continuous bond, which must be accompanied by a rider. The rider shall read as follows:

By this rider to the Customs Form 301 No. _____, executed on _____, by _____ as principal(s), importer no(s). _____, and _____, as surety, code no. _____, which is effective on _____, the principal(s) and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto. The principal(s) and surety also agree that, when an Aggregate Reconciliation under this rider lists entries occurring in more than one bond period, any liabilities to Customs reflected in that Aggregate Reconciliation shall be attributable (up to the full available bond amount) to any or all of those bond periods.

The continuous bond obligated on the underlying entries, along with the rider, will be used to cover the Reconciliation. Adequate bond coverage must exist for the Reconciliation.

All underlying entry summaries subject to one Reconciliation must be covered by one surety and one continuous bond. Each Reconciliation must be covered by one surety. Termination of the continuous bond, either by the bond principal or surety, will require that a Reconciliation be filed for the entries covered by the terminated bond, and a separate Reconciliation be filed for the entries covered by the new bond (within the designated time frames).

Termination of the Reconciliation Bond Rider by either the principal or the surety may be affected in accordance

with procedures set forth in part 113.27, Customs Regulations. Termination of the Reconciliation Bond Rider will not serve to terminate the underlying bond. Moreover, it should be noted that Customs will not terminate bonds or riders filed pursuant to this prototype.

8. Reconciliation Component of the NCAP/P—Chain of Events

a. Entry summaries flagged for reconciliation—

(1) An electronic indicator, or “flag”, signifying that underlying entry summaries are to be reconciled, will be applied at the header level. The flag designates that the indicated issue(s) for the entire entry summary (not just a specific line) is subject to reconciliation.

(2) As mentioned above, there is also a “blanket application” option, in which ACE will automatically set the flag for all of an importer’s entry summaries for a given period for a given issue(s).

(3) For purposes of this prototype, the “flag” (set either by the filer or by Customs in accordance with a blanket application) serves as the importer’s Notice of Intent to file a Reconciliation. The flag may be transmitted at the time of summary filing, or after summary filing in the case of a retroactive flag.

(4) The importer must use reasonable care in filing the entry summary, including but not limited to declaring the proper value, classification, and rate of duty on the underlying entry summary, regardless of whether a particular issue has been flagged for reconciliation. For example, if the entry summary is subject to value reconciliation, the importer must still use reasonable care in providing a good faith value estimate, and deposit the appropriate duties, taxes, and fees at time of entry summary.

(5) Entry summaries may be flagged for reconciliation until the close of the test period.

b. Liquidation of underlying entry summaries—Liquidation of the underlying entry summary will occur as with any entry summary and will be posted to the Bulletin Notice of Liquidation. Importers who participate in this prototype will recognize that the liquidation of the underlying entry summary pertains only to those issues not identified by the importer as subject to reconciliation. Upon liquidation of the underlying entry summaries, any Customs decisions entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. It should be noted that liquidation of the underlying entry summaries may, but does not necessarily, precede the filing of the Reconciliation.

c. Importer Electronically Transmits the Reconciliation—

(1) When the importer has finalized the outstanding information, and has the answer to the issue in question, the filer, using reasonable care, will electronically transmit the Reconciliation to Customs.

(2) Transmission of a Reconciliation for value, HTSUS heading 9802, and/or classification must occur within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. Transmission of a NAFTA Reconciliation must occur within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation.

(3) Each Reconciliation will be limited to one importer of record and one surety, i.e., the underlying entry summaries and the Reconciliation must have the same importer of record and the same surety.

(4) This prototype will allow up to 9,999 underlying entry summaries per Reconciliation.

(5) The importer must clearly document how the information in the Reconciliation was derived. The importer must maintain all supporting documentation required to substantiate the declaration made via the Reconciliation, and provide this information to Customs or Census upon request. Supporting documents may include, but are not limited to:

- (a) CF 247—Cost Submission;
- (b) Detailed line-level spreadsheets;
- (c) Landed cost analysis sheets;
- (d) Invoices, purchase orders, and contracts; and
- (e) Documents supporting apportionment of assists in accordance with 19 CFR 152.103(e).

(f) Documents supporting a post-importation NAFTA claim in accordance with 19 CFR 181.32.

The recordkeeping provisions of the Customs laws and regulations apply to the Reconciliation and all supporting documentation as described above.

(6) While underlying entry summaries may be flagged until the close of the test period, Reconciliations may be filed and liquidated after the closing date of the test.

(7) Structure—For both the entry-by-entry and aggregate methods of reconciliation, the structure of the Reconciliation will include a header, association file, and line item data. The header record will contain basic summary data for the Reconciliation. The association file will contain the list of entry summaries being reconciled, and for Entry-by-Entry Reconciliations, the revenue adjustment per entry

summary. Under the line item data, each reconciliation line will be consolidated for all of the underlying entry summaries listed in the association file. Each combination of HTSUS, country of origin, Special Program Indicator (SPI) and calendar year of release will require a separate line. Upon request, Customs will provide applicants and other interested parties with sample Reconciliations of each type.

d. Payment—Payments of duties, taxes, fees, and interest due from the participant as a result of the Reconciliation will be reflected on the participant’s periodic statement and are due on the statement pay date. (See Section IX below). Refunds will be paid individually at the time of liquidation. Interest on increases due Customs must be deposited when the Reconciliation is filed, and will be calculated pursuant to 19 U.S.C. 1505.

e. Taxes and fees—For entry-by-entry Reconciliations, all taxes and fees on each entry summary must be adjusted to show the correct amount appropriate to that entry summary had the complete information for the transaction been known at the time of entry summary filing. On Aggregate Reconciliations, since monetary changes to individual entry summaries are not reported, adjustments to taxes and fees will be reported as follows:

(1) Taxes and Fees applied to individual commodities, such as Cotton Fee, Beef Fee and the like, will be adjusted by multiplying any increase in dutiable value by the rate associated with the tariff number for the product in question.

(2) For Harbor Maintenance Tax (HMT), the importer is responsible for determining and declaring the amount owed, based on any increase in dutiable value, for those products which had been subject to HMT at the time of original entry summary.

(3) Merchandise Processing Fee (MPF) will be determined and declared in a similar fashion. The importer is responsible for determining and declaring the proper amount of MPF due based on any increase in dutiable value, at the MPF rate applied to the product at time of filing the underlying entry summary. Because there is a maximum assessment of MPF for entry summaries, Customs will use the following formula to set the maximum MPF to be paid on an Aggregate Reconciliation: $[(\$485 \times \text{number of entries covered by the Reconciliation which were subject to MPF}), \text{less the amount of MPF already paid on those same entries.}]$

f. Liquidation of Reconciliation—

(1) The Reconciliation will be reviewed and liquidated, and the liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation. One bill or refund will be issued if a revenue change is appropriate. Revenue changes determined at liquidation will not be included on the periodic statement. Participants should recognize that there may be instances where no bill or refund is necessary. Interest will be calculated in accordance with 19 U.S.C. 1505. Please note: Customs is in the process of analyzing options for interest calculation which are revenue-neutral and do not link to every underlying entry summary. A subsequent **Federal Register** notice will be published with any options for interest calculation. Until such further notice, interest must be calculated in accordance with 19 U.S.C. 1505.

(2) On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to any decision pertaining to the liquidation of the Reconciliation.

D. Reasonable Care and Recordkeeping

Under the statutory mandate of 19 U.S.C. 1484, the importer is responsible for using reasonable care in declaring at entry, among other things, the proper value, classification and rate of duty applicable to imported merchandise. The public is reminded that the obligation to use reasonable care applies to all aspects of reconciliation, including the filing and flagging of the underlying entry summaries and the filing of the Reconciliation.

Auditable and verifiable financial records must be the basis for any Reconciliation. Accordingly, the importer is required to maintain all records to support the Reconciliation, whether an Entry-By-Entry or Aggregate Reconciliation, pursuant to Customs recordkeeping laws and regulations, and maintain a system of records providing an audit trail between the data provided in the Reconciliation and the importer's books and records.

Upon request by Customs and/or Census, further information in support of the Reconciliation must be provided by the importer. For example, Customs may, for verification purposes, request that the importer break down a certain [HTSUS/country of origin] line by part number, contract number, etc., and provide the documentation to support the change made at that level. The importer will have to track the adjustment to entry if requested by Customs. Census may in certain circumstances request that the yearly change for a given [HTSUS/country of

origin/SPI] be broken down to quarterly adjustments, in order to capture seasonal fluctuations.

IX. Statement Processing

In order to permit a different procedure to test the periodic deposit of estimated duties without adversely affecting the collection of revenue, participants must abide by the following procedures.

A. Periodic Statements

Customs will electronically produce two types of statements each month, one before (preliminary) and one after (final) the filing deadline. The preliminary statement will be available anytime from the 1st of the month following the release period (calendar month) until the 10th of the month following the release period. The preliminary statement must be requested by the participant; it will not be issued automatically. It will then be produced as part of a scheduled periodic automated routine. The preliminary statement is for information purposes only.

The final statement will be produced immediately after the 10th of the month following the release period (filing deadline). The final statement will show amounts due to, or payable by, Customs. Any amounts due shall be initiated via ACH credit by the 15th of the month following the release period. Only NCAP/P entry release transactions will be included on the statement.

1. Entries Released During the Release Period

All entries, with revenue due, released during the release period, will be listed on the final statement. This will include Reconciliations filed during the release period. The statement will show the amount due and the amount of the preliminary estimated payments (described below) applied to each entry. The statement will normally contain a balance due, but if the preliminary estimated payments exceed the total estimated duties, taxes, and fees due, there would be an amount payable by Customs.

2. Prior Statement Items

Any estimated duties, taxes, and fees that have appeared on a previous statement that have an open balance, payable to Customs, will be listed on the final statement. This will consist of any NCAP/P entry transactions where the participant still owes Customs estimated duties, taxes, and fees.

3. Violation Bills

Any violation bills that are open at the time the final statement is produced will be listed on the statement for informational purposes only. The violation bills will be shown separately and the amounts will not be consolidated with entry related transactions. Customs will only apply funds to violation bills if specifically designated by the participant. (See Section X below.)

B. Payment Process

The participant will make three types of payments to Customs via ACH credit. The three types include preliminary estimated payments, final statement payments, and specific payments.

1. Preliminary Estimated Payments

The preliminary estimated payments shall be initiated by the 15th and last day of the month of the release period. If the 15th or the last of the month falls on a weekend or holiday, the payment shall be initiated by the next business day. These estimated payments are to ensure revenue neutrality.

a. All payments shall be made via ACH credit and initiated no later than the 15th or the end of the month.

b. The first preliminary estimated payment will be 75% of the estimated revenue due to Customs as a result of entry activity for the first 15 days of the calendar month.

c. The second preliminary estimated payment will be 57% of the estimated revenue due to Customs as a result of entry activity from the 16th to the end of the month.

These percentages will be reviewed and may have to be adjusted to maintain revenue neutrality. The participant will be required to identify the applicable release period for the payment. This identification will be done as part of the ACH transaction. The preliminary estimated payment will always be applied against the entries released during the period identified by the participant. If there is an amount remaining after this application, that is, if the estimated payments exceed the total duties, taxes, and fees due for the period, it will be held by Customs and applied to the next statement, unless the participant requests a refund within 10 calendar days.

2. Final Statement Payment

This payment shall be initiated by the 15th of the month following the release period, and should include:

- a. Any prior period estimated duties, taxes, and fees, payable to Customs; and
- b. The difference between the total amount of revenue due on entry

summaries filed during the release period and the preliminary estimated payments.

The final statement payment shall be initiated, through ACH, on the 15th of the month following the release period. The settlement date of this transaction is the date which will serve as the date of actual deposit of estimated duties and fees for purposes of assessing interest under 19 U.S.C. 1505. The final statement payment received by Customs will be applied against any estimated duties, taxes, and fees payable to Customs listed on the statement. If there is an amount remaining after this application, that is, if the final statement payment exceeds the final statement amount due, it will be held by Customs and applied to the next statement, unless the participant requests a refund within 10 calendar days.

3. Specific Payment

This is a payment that explicitly identifies the item to be paid. This identification is done as part of the ACH payment transaction. A specific payment will be applied against the specifically identified item. If there is an amount remaining after this application, that is, if the payment exceeded the amount due for the specific item, it will be held by Customs and applied to the next statement, unless the participant requests a refund within 10 calendar days. If the specific item identified by the participant is not found, the payment will be held in suspense until further instructions are provided by the participant. The participant may notify Customs of any individual amounts due to which they do not want Customs to apply funds. Customs will not apply any funds to these items until explicitly informed to do so by the participant.

X. Misconduct Under Prototype

All participants in the NCAP/P, whether accepted under the prior notice or this notice, are required to abide by the terms and conditions of this notice. Customs may employ the violation billing process for certain instances of misconduct. In those instances where a bond breach has occurred, the facts are known, and the harm to the government is quantifiable, Customs may issue a violation bill to the participant. The participant may choose to pay the violation bill, in which case, liquidated damages will not be issued and the matter will be closed. Should the participant wish to contest or fail to pay the violation bill, liquidated damages will be issued and the administrative procedures of Part 172 of the Customs Regulations will be invoked.

If a participant is removed from or voluntarily discontinues participation in the Importer Compliance Monitoring Program; if a participant fails to cooperate fully in a Compliance Assessment or audit, provide timely and accurate data and adequate resources in support of a Customs Compliance Assessment or audit; if a participant fails to abide by the terms and conditions of a compliance improvement plan; if a participant enters or attempts to enter goods conveyed by non-LBCIP carriers on the southern border; enters or attempts to enter goods from shippers or sellers/vendors or conveyed by carriers not approved by Customs; enters or attempts to enter goods classified in commodity ranges not approved by Customs; files non-consumption entries; enters or attempts to enter or submit data relating to prohibited merchandise, merchandise subject to quota or antidumping or countervailing duties, or other non-eligible merchandise; fails to maintain sufficient continuous bond coverage; files erroneous or untimely data; makes late or inadequate payments; misuses reconciliation by using it when the reconciliation issue is not truly undeterminable at the time of entry summary; fails to supply Customs with requested invoice data or sufficient supporting documentation for a Reconciliation; fails to maintain a sufficient level of compliance; fails to exercise reasonable care in the execution of participant obligations; or otherwise fails to follow the procedures outlined herein, and applicable laws and regulations, then the participant may be suspended from the prototype, subject to liquidated damages, penalties, and/or other administrative sanctions, and/or prevented from participation in future prototypes. Customs has the discretion to suspend a prototype participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Director, Trade Compliance, within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the

suspension may be effective immediately.

XI. Regulatory Provisions Suspended

Certain provisions of Parts 24, 111, 113, 141, 142, 143, 159 and 181 of the Customs Regulations (19 CFR Parts 24, 111, 113, 141, 142, 143, 159 and 181) will be suspended during this prototype test to allow for monthly filing of entry summary data, periodic payment of duties, taxes, and fees, reconciliation for NAFTA, classification, value and 9802 issues, liquidation, billing and remote filing by Customs brokers in ports where they currently do not hold permits.

Absent any specified alternate procedure, the current regulations apply.

XII. Prototype Evaluation

Once the importers are selected for the NCAP/P, the Joint Prototype Team will, during the initial six months of the test period, evaluate the effectiveness of the automation involved. Subsequent reviews will additionally consist of evaluating the data received from the importers, along with the internal and external process operations of the NCAP/P.

Additional importers may become eligible during the prototype period, using the eligibility requirements cited above, thereby increasing the number of companies involved in the NCAP/P. The evaluation of the prototype as it pertains to these importers may occur separately from that which is done on the original participants. Regardless, the intention of the evaluations is to enhance operational procedures and to develop the detailed data requirements that are needed for the NCAP/P.

Note that the fact of participation in the NCAP/P is not confidential information. Lists of participants will be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request. We stress that all interested parties are invited to comment on the design, conduct, and evaluation of the NCAP/P at any time during prototype.

Upon conclusion of the prototype the final results will be published in the **Federal Register** and the Customs Bulletin as required by § 101.9(b), Customs Regulations, and reported to Congress.

Dated: August 17, 1998.

Robert S. Trotter,
Assistant Commissioner, Office of Field Operations.

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