by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Whitesburg, KY. A GPS SIAP, helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Whitesburg Appalachian Regional Hospital. The operating status of the heliport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above teh surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

On December 17, 1999, a NPRM was published in the **Federal Register** to amend the Wise, VA, Class E5 airspace, to include a helicopter point in space approach which has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY, (64 FR 70610). It has been determined that the Whitesburg Appalachian Regional Hospital Class E5 airspace area would not join the Wise, VA, Class E5 airspace.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follow:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows: Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Whitesburg, KY [New]

Whitesburg Appalachian Regional Hospital, Whitesburg, KY, Point In Space Coordinates
Lat 37°07′16″N, long. 82°50′34″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 37°07′16″N, long. 82°50′34″W) serving Whitesburg Appalachian Regional Hosptial, Whitesburg, KY.

* * * * *

Issued in College Park, Georgia, on January 12, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–1816 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AC32

Country of Origin Marking

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to restructure and clarify the country of origin marking rules set forth in part 134 of the Customs Regulations. These proposed amendments do not create any new marking requirements, but rather clarify the existing ones. These proposals are being made to promote the concept of informed compliance by the trade and proper field administration of the statutory requirements.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions with regard to the following

subject areas may be directed to the following staff attorneys of the Special Classification and Marking Branch, (202) 927–2310: Definitions of ''country,'' ''country of origin'' and ''ultimate purchaser''—Kristen VerSteeg; Marking of containers—Monika Brenner; and Marking and certification requirements for processed and repackaged articles—Burton Schlissel.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) of the Tariff Act of 1930 (hereinafter ''Tariff Act''), as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. 1304.

In view of the extensiveness of the marking requirements and exceptions under section 304, the regulations implementing this law by necessity are very detailed. Over the years Customs has received comments from various members of the trade community expressing difficulty in understanding their basic obligations under the marking statute. For example, importers have expressed difficulty in understanding when they or their transferees would be considered the ''ultimate purchaser'' under section 304, or when a container would have to be marked with its own origin.

Acknowledging these types of concerns and the fact that the current Customs Regulations may not sufficiently assist importers in meeting their statutory obligations, Customs announced in a Notice of modification of a country of origin marking ruling letter published in the Customs Bulletin (30 Cust. B. & Dec. 14 at 22) on April 3, 1996, that it would undertake a revision of 19 CFR part 134. In adherence to this commitment, Customs is now initiating significant restructuring and clarification of the provisions contained in part 134.

Customs believes that these proposals, which do not create any new marking requirements, but rather clarify the existing ones, will promote the concept of informed compliance by facilitating compliance by the trade and proper field administration of the statutory requirements. Customs is encouraged in this regard by the trade's positive response to its recent amendments relating to ''marking when name of country or locality other than country of origin appears'' (Treasury Decision (T.D.) 97–72), which made the regulations not only less rigid, but more consistent with Customs current practices. Below is a description of the proposed changes set forth in this document.

I. Restructuring of Part 134

During the course of this review of part 134, Customs discovered that one of the major reasons part 134 of the Customs Regulations is difficult to follow is due to the order of the provisions setting forth the marking requirements and exceptions under the statute. Presently, the subpart setting forth ''Exceptions to Marking Requirements'' is placed in the regulatory scheme after the subpart concerning ''Marking of Containers or Holders''. We believe that the logical sequence would be to place the subpart pertaining to ''exceptions'' to the marking requirements immediately following the subpart containing the general marking requirements. Moreover, since a majority of the marking requirements for containers arise in connection with an article that is excepted from individual marking, we believe it makes it easier to understand the statutory requirements and is more conducive to informed compliance if the container marking requirements are set forth in the regulations after both the general marking requirements and exceptions for marking of individual articles. Accordingly, Customs is proposing that the order of subparts under part 134 be redesignated so that current subpart D (''Exceptions to Marking Requirements'') is redesignated as subpart C and current subpart C (Marking of Containers or Holders) is redesignated as subpart D.

II. Definition of ''Country''

The definition of the term ''country'' is found in ¶134.1(a), Customs Regulations (19 CFR 134.1(a)). In the past, Customs has relied upon advice received from the Department of State in making determinations regarding the ''country of origin'' of a good for marking purposes. For example, based upon instructions received from the Department of State, in T.D. 49743, dated November 10, 1938, Customs held that, as a result of a change in jurisdiction from Czechoslovakia to Germany in the Sudenten areas under German occupation, products manufactured in these areas and exported on or after the date of German occupation were considered products of Germany for country of origin marking purposes. In *United States* v. *Friedlaender* & Co., 27 C.C.P.A. 297 (February 26, 1940); C.A.D. 104 (1940), the court concurred with Customs decision that merchandise which had been exported at a time in which the Czechoslovakian location of manufacture was under German occupation should be marked to indicate ''Germany'' as the country of origin. Subsequently, acting upon information received from the Department of State that the boundaries of Czechoslovakia had been reestablished as they had existed prior to the date of occupation by Germany, Customs held in T.D. 51360, dated November 30, 1945, that articles manufactured or produced in Czechoslovakia after May 8, 1945, should be regarded as products of Czechoslovakia and marked accordingly.

More recently, by letter dated October 24, 1994, the Department of State notified the Department of the Treasury that, in view of certain developments, principally the Israeli-PLO Declaration of Principles on Interim Self-Government Arrangements (signed on September 13, 1993), the primary purpose of 19 U.S.C. 1304 would be best served if goods produced in the West Bank and Gaza Strip were permitted to be marked ''West Bank'' or ''Gaza Strip.'' Accordingly, in T.D. 95–25, published in the **Federal Register** (60 FR 17067) on April 6, 1995, Customs notified the public that, unless excepted from marking, goods produced in the West Bank or Gaza Strip shall be marked as ''West Bank'' or ''Gaza Strip'' and not contain the words ''Israel,'' ''Made in Israel,'' ''Occupied Territories-Israel,'' or words of similar meaning. Subsequently, upon receipt from advice from the Department of State that it considered the West Bank and Gaza Strip to be one area for political, economic, legal and other purposes, Customs notified the public that acceptable country of origin markings for goods produced in the territorial areas known as the West Bank or Gaza Strip include the following: ''West Bank/Gaza,'' ''West Bank/Gaza Strip'' ''West Bank and Gaza,'' ''West Bank and Gaza Strip,'' ''West Bank,'' ''Gaza'' and ''Gaza Strip.'' (*See,* T.D. 97–16, published in the **Federal Register** (62 FR 12269) on March 14, 1997).

Therefore, in light of Customs past reliance on advice from the Department of State, Customs is proposing that § 134.1(a), of the Customs Regulations (19 CFR 134.1(a)) be amended to allow

greater flexibility to encompass changes by the Department of State in the political recognition of territories and nation-states.

III. Definition of ''Country of Origin''

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809). Subtitle D of Title III addresses textiles and includes section 334 (codified at 19 U.S.C. 3592) which provides rules of origin for textiles and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of ''textiles and apparel products.'' Accordingly, on September 5, 1995, Customs published § 102.21, Customs Regulations (19 CFR 102.21), in the **Federal Register** (60 FR 46188), implementing section 334. Thus, with limited exceptions, effective July 1, 1996, the country of origin for a textile or apparel product is determined by a sequential application of the origin rules set forth in ¶ 102.21.

Section 334(b)(1) of the URAA sets forth general principles concerning how the origin of textile and apparel products should be determined, stating, in pertinent part, that the origin rules set forth in section 334 apply ''for purposes of the customs laws and the administration of quantitative restrictions * * * '' There is no dispute that section 304 of the Tariff Act of 1930 is a customs law. Although the current language of 19 CFR 134.1(b), which defines ''country of origin,'' previously has been modified to incorporate other recent legislative action (*e.g.*, the implementation of the North American Free Trade Agreement (NAFTA)), no reference is made to those rules affecting the determination of origin of textile and apparel articles. This document proposes to include such a reference.

IV. Definition of ''Ultimate Purchaser''

Section 304 requires that articles of foreign origin be marked as legibly, indelibly, and permanently as the nature of the article will permit to indicate to the *ultimate purchaser in the United States,* the name of the country of origin. Congressional intent in enacting the marking statute, was:

> that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. *United States* v. *Friedlaender & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

The term ''ultimate purchaser'' currently is defined in § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) as ''the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the ''ultimate purchaser'' is the last person in the United States who purchases the good in the form in which it was imported.'' As an example of ''ultimate purchaser'', § 134.1(d) states that a U.S. manufacturer may be the ''ultimate purchaser'' if he subjects the imported article to a process which results in a substantial transformation, ''even though the process may not result in a new and different article.''

On the other hand, § 134.35(a) Customs Regulations (19 CFR 134.35(a)), which is currently set forth in the regulations under the subpart covering ''exceptions to marking requirements'', applies the principle of the decision in the case of the *United States* v. *Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) in determining the ultimate purchaser for non-NAFTA origin articles. Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the new and different article will be considered the ''ultimate purchaser'' of the imported article.

In *United States* v. *Gibson-Thomsen Co., Inc., supra* (1940), the court considered the acceptability of country of origin marking on imported merchandise which would be ultimately obscured by subsequent processing in the United States. Upon review of the legislative history of section 304(a), Tariff Act of 1930, the court found nothing to indicate that Congress intended to require that an imported article used as a material in the manufacture of a new article with a new name, character and use be marked so as to indicate the foreign origin of the material to the retail purchaser. Accordingly, the court concluded that the U.S. processor was the ''ultimate purchaser'' of the imported materials and held that the articles were properly marked upon importation.

While the incorporation of the *Gibson-Thomsen* decision into the Customs Regulations in general is appropriate, its placement in the subpart relating to ''exceptions to the marking requirements'' causes confusion in understanding the marking statute. The court in *Gibson-Thomsen* did *not* create a new marking exception to the marking requirements under section 304(a). Rather, the court provided an interpretation of when one of the elements of the marking requirement is satisfied, *i.e.*, the requirement that a good be marked until it reaches the ultimate purchaser in the U.S.

The example currently cited in § 134.1(d)(1), that a manufacturer who subjects the imported article to a process may be the ''ultimate purchaser'' *even though the process may not result in a new and different article* represents a glaring contradiction to the new name, character and use test of *Gibson-Thomsen, supra.* Therefore, Customs is proposing to amend the regulations to clarify that only the *Gibson-Thomsen* standard (which Customs has incorporated into the NAFTA Marking Rules) will be applicable for determining whether a U.S. processor of imported articles becomes the ''ultimate purchaser'' for purposes of section 304. This standard should be set forth in the definitions under ''general provisions'' as opposed to the subpart pertaining to the exceptions to marking requirements.

Also problematic for Customs and importers is the identity of the ''ultimate purchaser'' of an article supplied by one party to another, as a gift or other distribution outside the context of a direct purchase transaction. Customs has consistently ruled that when an article is provided as a gift or convenience, the donee or recipient is the ultimate purchaser and the article must be individually marked with its country of origin (*See* HRL 709964 (May 7, 1979), also published as Customs Service Decision (C.S.D.) 79–406, 13 Cust. Bull. 1609 (1979), where Customs held that the ''ultimate purchaser'' of imported plastic pencils distributed as giveaway advertising material was the donee).

However, in *Pabrini, Inc.* v. *United States,* 630 F. Supp. 360 (CIT 1986), the court discussed the identity of the ''ultimate purchaser'' of imported umbrellas distributed to race track patrons upon payment of the regular admission fee. The court observed that, although Customs had applied the requirements of the marking statute to gifts since 1924, the language of the current statute which specifically protects an ''ultimate purchaser in the United States'' was not adopted until 1938, as part of the Customs Administrative Act of 1938, chapter 679, section 3, 52 Stat. 1077 (*See* T.D. 40547, dated December 6, 1924, where six unmarked clocks purchased abroad as gifts for friends were denied entry). The court examined the congressional history of the 1938 statute and found no

evidence of congressional intent in the 1938 revision with respect to the meaning of the ''ultimate purchaser'', but noted that the term ''consumer'' had been used in colloquy at hearings before the subcommittee (*Pabrini, supra,* citing *Customs Administrative Act: Hearings on H.R. 8099 Before a Subcomm. Of the Comm. On Finance, United States Senate,* 75th Cong., 3d Sess. 57 (1938)). Ultimately, the court made no finding regarding the validity of 19 CFR 134.1(d), but determined that the race track patrons, by paying the price of regular admission, were not donees of gifts, but rather were the ''ultimate purchasers'' of the imported umbrellas.

Articles distributed in the context of an employer-employee relationship have been treated somewhat differently. In HRL 732793 (December 29, 1989), Customs held that the commercial employer, not the recipient of the gloves was the ''ultimate purchaser'' of disposable string knit gloves sold to the employer for distribution to their employees. (*See also* C.S.D. 89–89 (March 18, 1989); HRL 703319 (May 14, 1974); HRL 729800 (October 10, 1989); and HRL 734681 (October 16, 1992)).

Finally, there is the dichotomy which appears in the language of the current regulations, which provide that the ''ultimate purchaser'' of an article from a non-NAFTA country distributed as a gift is the recipient, but the ''ultimate purchaser'' of a similar article which is a good of a NAFTA country is the purchaser of the gift (19 CFR 134.1(d)(4)). Thus, in this instance, the identity of the ''ultimate purchaser'' is dependent upon the origin of the article, permitting disparate resolution for articles similarly distributed.

Therefore, in view of the absence of evidence of a contrary legislative intent or judicial interpretation, Customs is proposing to consider the ''ultimate purchaser in the United States'' for purposes of section 304(a) as representing only the person who is the last *purchaser in the United States,* as opposed to the last *recipient* in the United States, of the imported article in all cases regardless of either the origin of the imported article or the purpose for which the imported article is distributed.

Accordingly, in view of the foregoing discussions, Customs is proposing that § 134.35 be removed and that § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) be amended.

V. Revision of 19 CFR 134.1(d) Regarding Textiles

As previously indicated in the discussion of the definition of ''country of origin,'' the country of origin of textile or apparel products is generally determined in accordance with the Uruguay Round Agreements Act (URAA), *supra,* section 334 (codified at 19 U.S.C. 3592). A U.S. processor of foreign textile or apparel products is the ''ultimate purchaser'' of such articles if such processing effects a change in the country of origin (*i.e.,* a ''substantial transformation'') of the imported article under the section 334 rules of origin, which are implemented under 19 CFR 102.21. Customs has taken this position in numerous rulings based upon the fact that—(1) except for determining the origin of goods processed in Israel, section 334 applies for all ''origin'' determinations for purposes of the ''customs laws'', (2) section 304 of the Tariff Act is a customs law, and (3) the origin question in ''ultimate purchaser'' determinations involving U.S. processing is whether, as a result of such processing, the imported article is still of ''foreign origin''. *See,* HRL 559625 (January 19, 1996); *See also* HRL 559627 (June 27, 1996), and HRL 559760 (July 19, 1996). Therefore, for textile or apparel products within the scope of section 334, URAA, § 134.1(d) is proposed to be amended to expressly reflect that only § 102.21 rules are applicable for determining who is the ''ultimate purchaser'' on the basis of the post-importation processing in the U.S.

VI. Addition of Definition of ''Usual Containers''

Section 304(b) states in part that usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin. Currently, the term ''usual container'' is defined in § 134.22(d)(1), Customs Regulations. Since the statutory exception for section 304(b) applies to all ''usual containers'' used as such at the time of importation and not just to usual containers that are goods of a NAFTA country, to avoid confusion and promote clarity and understanding of the general marking requirements, Customs is proposing that the regulation establishing the definition of ''usual container'' be set forth in a more general area of part 134. Accordingly, Customs is proposing that § 134.22(d)(1) be removed and the text of that current section be moved to the general provisions of subpart A, as a new § 134.1(l). Other provisions relating to the marking requirements for usual containers should continue to be set forth in the specific subpart for containers with cross references to the definition in § 134.1(l) as appropriate.

VII. Articles Usually Combined

Section 134.14(b), Customs Regulations was promulgated pursuant to 19 U.S.C. 1304(a)(2) to provide that the marking on an imported article shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation. The phrase ''combined with another article'' was initially intended to refer to a combining of an imported article with another article without any process of manufacture or production and in such a manner that their separate identities are maintained and do not become integral parts of an article manufactured or produced in the U.S. *See* T.D. 49715 (October 4, 1938). As various rulings indicate, the scope of § 134.14 was expanded from the initial example provided therein regarding the combination of an imported article with a marked bottle. Accordingly, Customs is proposing to set forth another example to show that § 134.14 also refers to situations in which an imported article is later combined after importation with another article which is not necessarily a container.

VIII. Exceptions to Marking Requirements (Redesignated Subpart C)

1. To clarify that some of the provisions set forth under current § 134.32 pertain to articles that are not required to be marked under section 304 in the first instance, *e.g.,* as in current § 134.32(m) ''products of U.S. exported and returned'' or current § 134.32(j) ''articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation'', Customs is proposing that the first paragraph of current § 134.32 be amended. It is noted that it is proposed to redesignate current § 134.32 as § 134.22.

2. Current § 134.26 (proposed to be redesignated as § 134.34) discusses imported articles repacked or manipulated and current § 134.34 (proposed to be redesignated as § 134.24) pertains to certain repacked articles. In order to clarify the distinction between these two sections, Customs is proposing to amend current § 134.34 (proposed to be redesignated as § 134.24) to make it clear that this section only applies when both the articles and their containers are unmarked as to country of origin at the time of importation, but are intended to be repacked into containers that will be marked with the origin of the imported articles. Also, Customs is proposing to add an example to illustrate the circumstances in which certification

requirements may be imposed as part of the port director's discretion to authorize the marking exception under current § 134.32(d) (proposed to be redesignated as § 134.22(d)) when the articles will be repacked after release from Customs custody.

IX. Marking of Containers—General Requirements (Redesignated Subpart D)

Certain portions of the container marking regulations in part 134 which were promulgated by T.D. 72–262, 37 FR 20318 (1972), do not reflect current law or are otherwise out-of-date or unclear. As previously noted in this document, Customs is proposing that the definition for ''usual containers'' be moved to the General Provisions under subpart A. As discussed more fully below, additional modifications are needed to clarify the general requirements relating to the marking of containers. If the following changes are adopted, current §§ 134.23 and 134.24 will be removed and the provisions thereof that are not duplicative will be incorporated into § 134.32 which is proposed to be a revised and redesignated version of current § 134.22. Proposed § 134.32 will set forth the general requirements and exceptions for marking all containers.

1. Sections 304(a)(3)(A) through (K) of the Tariff Act (19 U.S.C. 1304(a)(3)(A) through (K)) provide for various circumstances where an article is excepted from the marking requirements. Section 304(b) of the Tariff Act (19 U.S.C. 1304(b)) generally provides that where an article is excepted from the marking requirements, its immediate container or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked to indicate to the ultimate purchaser the country of origin of such article. Section 304(b), however, excepts from marking usual containers in use as such at the time of importation.

In *Bausch & Lomb Inc.* v. *United States,* 17 CIT 790 (August 5, 1993), the United States Court of International Trade noted that while an importer of foreign origin eyeglass cases could insert eyeglasses into the cases so that the cases may be considered as ''usual containers in use as such at the time of importation'' and be excepted from marking pursuant to 19 U.S.C. 1304(b), the court stated that since the cases at issue were empty and were not being used as usual containers at the time of importation, the cases were required to be marked with their own origin at the time of importation.

It is clear from a reading of 19 U.S.C. 1304(b) that usual containers used as such at the time of importation are not required to be marked with their own country of origin whether or not they are goods of a NAFTA country. Therefore, proposed § 134.32 reflects that (1) any usual container, whether or not a good of a NAFTA country, which is used as such at the time of importation, is not required to be marked with its own country of origin and (2) any language pertaining to whether a usual container is disposable is not relevant.

2. Currently, § 134.22(a) implements 19 U.S.C. 1304(b) and states that where an article is excepted from the marking requirements, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article, whether or not the article is marked to indicate its country of origin. Also, current § 134.24(d)(2) requires the container to be marked with the country of origin of its contents in cases where the articles within the container are marked but the container is normally sold without being opened by the ultimate purchaser. To reconcile the overlap between these two provisions, the last portion of current § 134.22(a) pertaining to whether or not the article is marked is not set forth in proposed § 134.32. Current § 134.24(d)(1) is also removed because this section basically contains the same requirements that are set forth in current § 134.22(a) and (e) and repeated in proposed § 134.32(a) and (c).

3. As stated earlier, in *Bausch & Lomb, supra,* the court acknowledged that a usual container not in use as such at the time of importation is to be treated as an article, required to be marked pursuant to 19 U.S.C. 1304(a), and is not subject to the exception under 19 U.S.C. 1304(b). Current § 134.22(b), however, requires that a container or holder which itself is an imported article, shall be marked with its own origin in addition to any marking which may be required to show the country of origin of its contents. Current § 134.22(b) also requires, pursuant to Annex 311 of the NAFTA, that no such marking is required for any good of a NAFTA country which is a usual container.

Therefore, in proposed § 134.32, Customs is proposing to clarify current § 134.22(b) to distinguish between usual containers used as such at the time of importation, usual containers not used as such at the time of importation, and containers or holders which do not meet the definition of a ''usual container''. The last portion of current § 134.22(b) pertaining to the exception for usual containers not in use at the time of importation which is a good of a NAFTA country is proposed to be repeated in proposed § 134.32(c)(2)(i) as it was promulgated to implement a provision of the NAFTA Annex 311.

Proposed § 134.32 also reflects the removal of the last sentence in current § 134.22(d)(2) pertaining to a container which is imported empty. In addition, it is proposed to not set forth the contents of current § 134.24(c)(2) in the proposed revision as it essentially contains the same requirements as current § 134.22(b) (proposed to be contained in § 134.32(d)).

4. Currently, § 134.22(b) requires containers or holders to be marked with their own country of origin when they are treated as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Current §§ 134.23 and 134.24 provide for the marking of containers or holders designed and capable of reuse and those containers not designed for or capable of reuse (disposable vs. non-disposable containers). Customs believes the confusion created by some of these provisions stems from the incorrect premise that there is a necessary distinction between these categories of containers and the categories of ''usual'' versus ''non-usual'' containers. Since the statute exempts ''usual'' containers from individual marking when in use at the time of importation, every container should first be measured against the definition of ''usual container'' to see whether a statutory marking exemption is applicable. The provisions in current §§ 134.23 and 134.24, generally do not provide this approach. To eliminate the confusion and sometimes totally unnecessary distinctions drawn between containers which are disposable vs. non-disposable and imported empty vs. imported full, Customs is proposing to make the following regulatory changes: (1) remove current § 134.23(a) since all usual containers used as such at the time of importation are excepted from marking; (2) remove current § 134.23(b) since the substance of this provision is already incorporated in the definition of ''usual containers'', which Customs is proposing to be moved to subpart A of part 134; and (3) remove current § 134.24(a) since disposable containers are encompassed within the definition of ''usual containers''.

5. Current § 134.22(c) provides that containers or holders which bear the name and address of a person or company in the U.S. which is not the country of origin shall be marked, in close proximity to such address, with the origin of the contents. This section is analogous to current § 134.46 which,

prior to its recent amendment, required an article indicating the name of a geographic location other than the true country of origin of the article to be marked in close proximity and in comparable size lettering with the country of origin of the article preceded by the words ''Made in'', ''Product of'', or words of similar meaning. In a final rule published August 20, 1997, in the **Federal Register** (62 FR 44211, T.D. 97–72), Customs amended § 134.46 to require such special marking only if the name of the geographic location that is not the country of origin may mislead or deceive the ultimate purchaser as to the actual country of origin. Therefore, Customs is proposing to modify current § 134.22(c) (to be redesignated as § 134.32(e)) to mirror the new § 134.46.

6. Customs, in order to provide further clarity, is proposing that the requirements set forth in current §§ 134.24(b) and 134.24(c)(1), *i.e.,* pertaining to the marking of the outermost containers of disposable containers imported empty, be placed within § 134.32 (the wholly revised and redesignated § 134.22) which will provide the general marking requirements for containers. Customs is also proposing to move the requirements of current § 134.24(d)(2) and (3), to the general rules for marking containers in § 134.32.

7. Subsection (b) of 19 U.S.C. 1304 provides that where an article is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(3)(F), (G), or (H), its usual container also shall not be subject to the marking requirements. Furthermore, 19 U.S.C. 1304(j)(1)(C) generally provides that where an article that qualifies as a good of a NAFTA country is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(e)(E) or (I) or 19 U.S.C. 1304(j)(1)(B)(i) or (ii), its ''usual container'' shall not be subject to the marking requirements. Currently, § 134.22(e) implements the above statutory provisions. In order to clarify when these exceptions for marking ''usual containers'' are applicable, Customs is proposing that they be moved to the same section which sets forth the circumstances for required marking of usual containers. Accordingly, these exceptions are proposed to be set forth in the wholly revised and redesignated § 134.32.

X. Marking of Containers—Repacked and Processed Articles

Currently, § 134.32 contains the general exceptions to the marking requirements. *See also* 19 U.S.C. 1304(a)(3). Among the exceptions are articles set forth in current § 134.33, known as the ''J-list.''

In T.D. 83–155, dated October 24, 1983 (48 FR 33860), Customs amended part 134 by adding a new section, 19 CFR 134.25, which pertains to the repacking of ''J-list'' articles and articles incapable of being marked. While the articles subject to these exceptions are not required to be marked, the containers or holders of these articles are subject to the marking requirements. The new section was added to address the issue of repacking in the U.S. by the importer or a subsequent purchaser of articles excepted from marking, after release of such articles from Customs custody. In such cases, it was often found that the new container in which the article was repacked for sale to the ultimate purchaser was not marked, thus frustrating the intent of Congress that the ultimate purchaser in the U.S. be aware of the country of origin of the article.

To ensure that the importer properly mark the repacked articles if the importer does the repacking or that subsequent repackers are made aware of their country of origin marking obligations, § 134.25 currently requires importers to certify to the port director that: (a) if the importer does the repacking, the new container will be marked to indicate the country of origin of the article; or (b) if the article is sold or transferred, the importer will notify the subsequent repurchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

In addition, current § 134.25 specifically provides that if the importer fails to comply with the certification requirements, the importer may be subject to assessment of liquidated damages under 19 CFR 134.54 for failure to mark or redeliver merchandise released from Customs custody and marking duties pursuant to 19 U.S.C. 1304(h). This section further provides that the importer also may be subject to a penalty under 19 U.S.C. 1592, if fraud or negligence is involved.

By T.D. 84–127 dated July 2, 1984 (49 FR 22793), Customs added 19 CFR 134.26 to the regulations which was intended to cover those situations involving the repacking of marked articles in retail containers (*e.g.,* blister packs) after their release from Customs custody. As in current 19 CFR 134.25, § 134.26 currently requires the importer to certify to the port director that: (a) if the importer does the repacking, the country of origin information appearing on the article will not be obscured or concealed, or else the container will be marked in accordance with applicable law and regulation; or (b) if the article is sold or transferred, the importer will notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. As under current 19 CFR 134.25, under current § 134.26, the importer may be subject to the imposition of liquidated damages, marking duties and penalties for failure to comply with the notification and certification requirements.

Current §§ 134.25 and 134.26 were intended to apply to articles which are repacked after importation, and the repacker is not the 'ultimate purchaser'' under 19 CFR 134.1(d) as a result of operations performed in the U.S. In cases where the repacker is the ultimate purchaser neither the article nor the container in which it is repacked is required to be marked. Consistent with the foregoing, Customs has frequently held that ''repacking'' to an article that may have been further processed, but not substantially transformed. *See, e.g.,* HRL 734989 (June 23, 1993).

However, the language in current § 134.25 is imprecise and does not convey the intent, as noted, that the regulations were intended to cover not only those articles that are subject to mere repackaging but also articles that have been processed but not substantially transformed (or which have not become a good of the U.S. under the NAFTA Marking Rules). Current § 134.26 does cover articles 'repacked or manipulated''; however, this provision similarly fails to indicate that it is not applicable when the manipulation results in a substantial transformation. In addition, the penalty provisions in both sections do not spell out the extent of the importer's statutory liability, which continues (unless the notice requirements are satisfied) even though the article is sold or transferred to subsequent repackers until the article reaches the ultimate purchaser.

It is further noted that the heading of current 19 CFR 134.25 refers only to certain articles that are excepted from marking, *i.e.,* J-list articles and articles incapable of being marked. Since this provision should encompass all articles excepted from individual marking but not from marking on their containers upon repacking or processing, Customs is proposing that the title and body of the provision be amended to reflect that the certification requirements extend to such other articles.

Therefore, Customs is proposing changes consistent with the foregoing discussion to clarify the scope of current §§ 134.25 and 134.26, and the extent of

the importer's liability under 19 U.S.C. 1304(a):

In accordance with prior Customs rulings, these regulations are proposed to be amended to provide that the term ''repacker'' shall include a U.S. party who also processes the articles when such operations in the U.S. do not amount to a substantial transformation (including an origin change under the NAFTA Marking Rules). This definition will make clear that there may be more than one repacker, prior to transfer to an ultimate purchaser. Examples will illustrate how the importer's statutory liability continues through all repackers until the article reaches the ultimate purchaser unless the certification requirements under the regulations are satisfied.

The definition of ''repacker'' is proposed to be included as paragraph (b) in both proposed redesignated § 134.33 (which consists basically of current § 134.25) and § 134.34 (which consists basically of current § 134.26). Current paragraphs (b), (c), (d), and (e) of § 134.25 are proposed to become paragraphs (c), (d), (e) and (f), respectively, of proposed § 34.33; and paragraphs (b), (c), (d), (e) and (f) of current § 134.26 are proposed to become paragraphs (c), (d), (e), (f), and (g), respectively, of proposed § 134.34.

Finally, since, as proposed, paragraphs (b) of both proposed §§ 134.33 and 134.34 will include a processor within the definition of ''repacker,'' the heading of § 134.34 will reflect that the section covers only ''repacked'' articles. There is no necessity for the term ''manipulated'' included within the heading as it is currently included within § 134.26.

XI. Removal of 19 CFR 134.47

In a final rule published in the **Federal Register** (62 FR 44211) on August 20, 1997, T.D. 97–72, § 134.46 was amended to ease the requirement that whenever words appear on imported articles indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity and in comparable size lettering to those words preceded by the words ''Made in,'' ''Product of,'' or words of similar meaning. As a result of this amendment, the special marking requirements of § 134.46 are triggered only if the non-origin reference ''may mislead or deceive the ultimate purchaser as to the actual country of origin.''

Section 134.47 (19 CFR 134.47) provides that when as part of a trademark or trade name or there appears as part of souvenir marking, the name of a location in the U.S., or the words ''United States'' or ''America'', the article shall be legibly, conspicuously and permanently marked to indicate the name of the country of origin of the article preceded by ''Made in,'' ''Product of,'' or other similar words, in close proximity or in some other conspicuous location. Unlike § 134.46, § 134.47 does not require the name of the country of origin to appear in at least a comparable size lettering as the non-origin reference. Section 134.47 is also less stringent than § 134.46 in that the latter provision requires the country of origin to appear ''in close proximity'' to the non-origin reference, while the former provision only requires that the country of origin appear ''in close proximity to the U.S. locality information or in some other conspicuous location.''

Customs believes there is no legal or practical reason for maintaining the disparity between the special marking requirements set forth in § 134.47 and those set forth in § 134.46, as amended by T.D. 97–72. The purpose of the requirements in both provisions, when triggered, is the same: to prevent the ultimate purchaser from being misled or deceived as to the actual country of origin of the article. A reference to a place other than the country of origin on an imported article or its container has the same potential for misleading or deceiving the ultimate purchaser when it appears as part of a trademark, trade name or souvenir marking as when it does not. Therefore, if such marking may mislead or deceive the ultimate purchaser as to the actual country of origin, it is immaterial that such marking appears as part of a trademark, trade name or souvenir marking, and the special marking requirements of § 134.46, should be applicable. Accordingly, Customs proposes to remove § 134.47 from the regulations. If this proposal is adopted, § 134.46, when triggered, will apply to any non-origin type reference, including those that are part of a trademark, trade name or souvenir marking.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Regulatory Flexibility Act

Insofar as the proposed amendments merely clarify existing regulations, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Canada, Country of origin marking, Customs duties and inspection, Imports, Labeling, Marking, Mexico, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendment

It is proposed to amend part 134, Customs Regulations (19 CFR part 134) as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 (19 CFR 134.1) is proposed to be amended by revising paragraphs (a), (b) and (d) and adding a new paragraph (l) to read as follows:

§ 134.1 Definitions.

* * * * *

(a) *Country.* ''Country'' means the political entity known as a nation. In addition, colonies, possessions, or protectorates outside the boundaries of the mother county may be considered separate countries. For other territorial areas, advice received from the U.S. Department of State or appropriate interagency council will be considered for determining whether a particular

territorial area should be treated as a ''country'' for marking purposes.

(b) *Country of origin.* ''Country of origin'' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part; for a non-textile or non-apparel good of a NAFTA country, this determination will be made pursuant to the NAFTA Marking Rules. Except when determining whether a textile or apparel article is a product of Israel, the country of origin of all textile or apparel products will be determined in accordance with the rules set forth in § 102.21 of this chapter.

* * * * *

(d) *Ultimate purchaser.* The ''ultimate purchaser'' is generally the last person in the United States who purchases the good in the form in which it was imported.

(1) *Where a substantial transformation of an imported article has occurred as a result of processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the ''ultimate purchaser'' if it subjects the imported article to a process that would result in the good becoming a good of the United States under the NAFTA Marking Rules. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* If a non-textile or non-apparel imported article other than a good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the ''ultimate purchaser'' if the processing results in a substantial transformation of the imported article, *i.e.,* the creation of a new article having a name, character, and use differing from that of the imported article, in accordance with the principle set forth in the case of *United States* v. *Gibson-Thompson Co.,* 27 C.C.P.A. 267 (C.A.D. 98).

(iii) *Textile or apparel products.* If an imported textile or apparel product will be processed in the United States, the processor is the ''ultimate purchaser'' if it subjects the imported article to a process that would result in the good becoming a good of the United States under § 102.21 of this chapter.

(2) *Where no substantial transformation of an imported article has occurred during processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in manufacture in the U.S. and the manufacturing process does not result in one of the changes set forth in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ''ultimate purchaser'' and the article shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* For non-textile or non-apparel products other than goods of a NAFTA country, if the manufacturing process does not result in a substantial transformation of the imported article, then the consumer or user of the article who obtains the article after the processing will be regarded as the ''ultimate purchaser'' and the article must be marked in accordance with this part.

(iii) *Textile or apparel products.* If an imported textile or apparel product will be further processed in the United States and the processing does not result in one of the changes set forth in § 102.21 of this title as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ''ultimate purchaser'' and the imported textile or apparel product shall be marked in accordance with this chapter.

(3) *Goods sold at retail.* If an article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. For example, where an imported screwdriver is repackaged in the U.S. as part of a tool kit, the ''ultimate purchaser'' is the retail purchaser, not the repackager.

(4) *Gifts or Samples.* If the imported article is distributed as a gift or sample free of charge, the last person who purchases the gift or sample is the ''ultimate purchaser.'' For example, where imported printed material is distributed as part of an unsolicited mailing, the recipient is not the ''ultimate purchaser.''

(5) *Articles purchased by an employer.*If an imported article is purchased by an employer on behalf of an employee, then the employer is the ''ultimate purchaser'' of the article. However, if the employee contributes to the purchase of the imported article, then the employee is considered the ''ultimate purchaser'' of the article. For example, where imported work gloves are sold to industrial supply distributors, who sell them to commercial employers (*e.g.,* meat cutters, hospitals, restaurant food handlers) which distribute the gloves to their employees for use on the premises, the ''ultimate purchaser'' of the imported articles is the commercial employer.

(l) Usual containers—A ''usual container'' means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

3. It is proposed to amend § 134.14 (19 CFR 134.14) by removing paragraph (b); redesignating paragraph (c) as paragraph (b); and adding two examples following paragraph (a) to read as follows:

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.*

* * * * *

Example 1. A ball point pen of Israeli origin and metal pen holder of Mexican origin are packaged together as a set in the United States. Pursuant to paragraph (a) of this section, the pen must be marked in such a manner as to distinguish the Israeli origin pen from the Mexican component, and it would be appropriate to mark the set ''Pen Made in Israel, Holder Made in Mexico''.

Example 2. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as ''Label made (or printed) in (name of country)'' or words of similar meaning. See subpart D of this part for marking of bottles, drums, or other containers.

* * * * *

4. It is proposed to redesignate subpart C, ''Marking of Containers or Holders'', consisting of §§ 134.21 through 134.26 as subpart D. It is proposed to redesignate §§ 134.21 and 134.22, respectively, as §§ 134.31 and 134.32, remove §§ 134.23 and 134.24,

and redesignate §§ 134.25 and 134.26, respectively, as §§ 134.33 and 134.34.

5. It is proposed to redesignate subpart D, ''Exceptions to Marking Requirements'', consisting of §§ 134.31 through 134.36, as subpart C. It is proposed to redesignate §§ 134.31 through 134.34, respectively, as §§ 134.21 through 134.24, remove § 134.35, and redesignate § 134.36 as § 134.25.

6. It is proposed to amend redesignated § 134.22 by revising the introductory paragraph to read as follows:

§ 134.22 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are either excepted from or are not subject to the marking requirements (*See* subpart D of this part for marking of containers):

* * * * *

7. It is proposed to amend redesignated § 134.24 by revising the heading and introductory paragraph (a) and adding an example after paragraph (a)(2) to read as follows:

§ 134.24 Repacked unmarked articles and containers.

(a) If imported articles or their outside containers are both not marked with the origin of the articles at the time of importation, but the articles are intended to be repacked into containers marked with the country of origin of the articles, an exception under § 134.22(d) may be authorized in the discretion of the port director under the following conditions:

* * * * *

Example. Unmarked surgical pack wrappers are imported in bulk cartons which are also not marked, but will be repacked by the importer into containers for sale exclusively to hospitals. Since the wrappers at the time of importation are not individually marked to indicate their country of origin or imported in marked containers that will reach the hospitals (ultimate purchasers), as a condition for granting an exception under § 134.22(d) the port director has discretion to require that—the importer mark the repacked wrappers under Customs supervision; or the importer execute a written certification that the repacked wrappers will be properly marked and submit a sample of the remarked wrappers.

* * * * *

8. It is proposed to revise redesignated § 134.32 to read as follows:

§ 134.32 General rules for marking of containers or holders.

(a) *Marking the origin of contents*—(1) *Contents excepted from marking.* Except as provided in paragraph 134.32(b)(1) of this section, whenever an article is excepted from the marking requirements by subpart C of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article.

Example 1. Dog rawhide bones incapable of being marked by means of a sticker, dye, ink, or tag because of their porous, rough, and uneven texture and potential harm to the animal are excepted from individual country of origin marking pursuant to § 134.22(a), but their outermost container or holder in which the bones ordinarily reach the ultimate purchaser shall be marked to indicate the country origin of the bones.

Example 2. Tomatoes imported from Mexico are excepted from the country of origin marking requirements pursuant to § 134.23, as J-List articles. When imported in master containers, these containers must be marked with the origin of the tomatoes. Furthermore, if the tomatoes are repacked into trays for distribution and sale at retail grocery stores, the trays must be marked with the origin of the tomatoes.

Example 3. An ancient Turkish statue is imported into the United States. Pursuant to § 134.22(i) it is excepted from individual country of origin marking requirements. The container in which the statue reaches the ultimate purchaser must be marked to indicate the origin of the statue.

(2) *Contents not excepted from marking.* When an article not excepted from marking is sold in a container or holder that is normally not opened by the ultimate purchaser or the marking on the article is not visible through the container (*e.g.*, individually wrapped soap bars or tennis balls in a vacuum sealed can), the container shall be marked to indicate the country of origin of its contents, regardless of whether the contents are marked.

Example 1. Surgical instruments of foreign origin are each packed inside opaque sealed bags, and are sold exclusively to hospitals. Although the surgical instruments are individually etched with their country of origin pursuant to § 134.43(a), since the ultimate purchasers, i.e., the hospitals cannot view the marking through the opaque bag, the outside container in which the hospitals receive the surgical instruments shall be marked with the origin of the surgical instruments.

Example 2. Small statues or figurines are articles that purchasers typically remove from their box to examine for damage prior to purchase. Accordingly, if figurines of foreign origin are legibly marked with their country of origin in a conspicuous place, their unsealed containers do not have to be marked with the country of origin, provided the containers themselves do not contain any markings that would trigger the application of paragraph (e) of this section 134.32(e).

(b) *Exception for marking the origin of contents*—(1) *Certain excepted articles.* The outermost container or holder in which the article ordinarily reaches the ultimate purchaser is not required to be marked if:

(i) It is a container or holder of an article excepted from marking pursuant to § 134.22(f), (g), or (h); or

(ii) It is a container of a good of a NAFTA country which is excepted from marking pursuant to § 134.22(e), (f), (g), (h), (i), (p), or (q).

Example. A major department store imports holiday decorations such as artificial trees, garlands, and wreaths of French-origin, and ornaments of German-origin only for use in the decoration of their stores and not for resale. Provided local port officials are satisfied that the ultimate purchaser, *i.e.*, the department store, is aware of the origins of the decorations and that the decorations will not be resold in the United States, both the decorations and their cartons in which the decorations are packed are excepted from marking pursuant to § 134.22(f).

(c) *Marking of the origin of usual containers*—(1) *Usual Container used as such at the time of importation.* A usual container, as defined in § 134.1(l) which is in use at the time of importation is not required to be marked with its own country of origin regardless whether it is reusable or not.

Example. Sunglasses of foreign origin are each packed and imported inside eyeglass cases of foreign origin. The sunglasses are marked as to their origin by means of an adhesive sticker on the lenses. As the eyeglass cases are considered usual containers and are used as such at the time of importation, they are not required to be marked with their own country of origin provided local Customs officials at the port of entry are satisfied that the eyeglass cases will reach the ultimate purchaser with the sunglasses packed therein.

(2) *Usual container not used as such at the time of importation.* (i) Except for a good of a NAFTA country, a usual container, as defined in § 134.1(l), which is not used as such at the time of importation shall be marked to indicate clearly the country of its own origin, unless the container itself is excepted from marking under subpart C of this part. A good of a NAFTA country which is a usual container is not required to be individually marked with its own origin whether or not in use as a usual container at the time of importation.

Example. Wooden crates of Mexican and Guatemalan origin are imported into the United States by the truckload and stacked upon each other. Once they are imported, they are sold to farmers who use them to transport their Florida tomatoes to market. As the wooden crates may be considered the usual containers of tomatoes, but are not used as such at the time of importation, the crates of Guatemalan origin each must be marked to clearly indicate that they are of Guatemalan origin, such as ''Crate Made in Guatemala''. However, since goods of a

NAFTA country that are usual containers are not required to be marked, the crates of Mexican origin that are imported by the truckload will not be required to be marked, provided Customs officials at the port of entry are satisfied that the Mexican crates will be used as usual containers after importation.

(ii) Regardless of the origin, if usual containers not in use as such at the time of entry are packed and imported in multiple units (dozens, gross, *etc.*), only the outermost container in which the usual containers reach the ultimate purchaser in the U.S. needs to be marked.

Example. Unmarked petri dishes of Canadian origin are imported inside large cartons and sold to Biologics Company in the United States. Biologics who fills the petri dishes with microorganisms for sale to various customers in the science community, is the ultimate purchaser of the dishes. Since the petri dishes are the usual containers of microorganisms, but are not used as such at the time of importation, the large carton (outer container) in which the petri dishes are packed and imported must be marked to indicate their Canadian origin.

(iii) If a usual container is marked with its own country of origin at the time of importation and the marking will be visible after it is filled, the marking shall clearly indicate that the named country pertains to the container only and not the contents. For example, if bottles, drums, or other containers imported empty, to be filled in the United States, are individually marked with their own origin, they shall be marked with such words as ''Bottle (or container) made in (name of country)''.

(d) *Container or holder other than usual containers.* Regardless of origin, a container or holder considered as an imported article under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and not considered a ''usual container'' as defined in § 134.1(l), shall be marked to clearly indicate the country of its own origin in addition to any marking which may be required to show the country of origin of its contents, except when such container or holder itself is excepted from marking under subpart C of this part.

Example 1. Suntan lotion of French origin is imported inside a plastic bracelet of Pakistani origin. Since the bracelet is not a container in which suntan lotion ordinarily reaches the ultimate purchaser, the bracelet is not considered a usual container and must be marked with its own country of origin, along with the origin of the suntan lotion if the origins are not the same. An appropriate marking would be ''Suntan lotion Made in France, Bracelet Made in Pakistan''.

Example 2. Necklaces of Italian origin illegibly stamped ''Italy'' are imported into the United States for retail sale. At the time of importation, each necklace is packed in a jewelry box of Taiwanese origin constructed of a hard-shell plastic covered by a gray velvet type material. The boxes open and close with the aid of a hinge, and the inside of the boxes is covered with a satin material. As the jewelry boxes are not usual containers, they must be marked to clearly indicate their own origin, along with the origin of the necklaces since the necklaces themselves are not legibly marked. A marking such as ''Box Made in Taiwan; Necklace Made in Italy'' would be acceptable.

(e) *Marking of containers of imported articles when a name of country or locality other than the country of origin of its contents appears on a container or holder.* In any case in which the words ''United States'', or ''American'', the letters ''U.S.A.'', any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the contents were manufactured or produced appear on the container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the contents, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in'', ''Product of'', or other words of similar meaning.

Example. The Canadian company ''Courrege'' distributes bracelets of French origin. The bracelets will be sold in jewelry boxes containing the words ''Distributed by Courrege, Ottawa'', and the bracelets are legibly stamped ''Made in France''. As the words ''Distributed by Courrege, Ottawa'' may mislead the ultimate purchaser that Canada is the country of origin, the boxes must be labeled ''Made in France'' or similar words on the same side as the words ''Distributed by Courrege, Ottawa'' and in at least a comparable size.

9. It is proposed to amend redesignated § 134.33 as follows:

a. Revise the heading;

b. Remove in paragraph (a) the words at the beginning of the first sentence ''If an article subject to these requirements is intended to be repacked in new containers'' and add in their place the words ''With the exception of articles whose containers are not required to be marked under § 134.32(b) of this part, if an article listed under § 134.23 or otherwise excepted from the marking requirements under § 134.22 is intended to be repacked in new containers''

c. Redesignate current paragraphs (b) through (e), respectively as new paragraphs (c) through (f);

d. Add a new paragraph (b); and

e. Add three examples following redesignated paragraph (f).

The revisions and additions read as follows:

§ 134.33 Containers or holders for repacked J-list articles and other articles excepted from marking.

* * * * *

(b) *Repacker.* A ''repacker'' means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example 1. The importer enters bulk packed articles from China which are incapable of being marked. The articles are not processed in any way while in the importer's possession but are sold to a person in the U.S. who will repackage the articles into individual containers without further processing for sale to retail purchasers. The importer does not notify the repacker of the marking requirements and provide the port director with a certification pursuant to this section. The articles are excepted from marking under § 134.22(a) of this part. Since the containers of the articles are not excepted from marking under § 134.32(b), and the transferee is considered a repacker under paragraph (b) of this section, the importer's failure to comply with the certification requirements may subject him to duties and penalties as provided under paragraph (e) of this section. The importer would also be obligated to comply with the certification requirements under similar facts if the articles were on the ''J-list'' (§ 134.23).

Example 2. The importer enters an article from Mexico which was produced more than 20 years ago, and in its original packaging resells it to a person in the U.S. who repacks it for sale to an ultimate purchaser. Under § 134.22(i), the article is excepted from the marking requirements. In addition, since the article is a good of a NAFTA country, the container is also excepted from the marking requirements pursuant to § 134.32(b). Therefore, the certification requirements of this section are not applicable.

Example 3. The importer enters an article from China which is on the J-list. The container housing the article is properly marked with China as the country of origin. The importer sells the article in its original packaging to a customer in the U.S. who processes it and then repacks it for sale to a third party. The third party in turn processes the article and repacks it for sale to a retail customer who consumes the article. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). Although the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements, the immediate customer repacks the article in

properly marked containers. However, the third party processor fails to mark the new container after processing and repacking the article, as required under 19 U.S.C. 1304. In this example, the article is excepted from individual marking but each new container in which the article is repacked is required to be marked with the country of origin, until the article reaches the ultimate purchaser, in this case, the retail customer. As a result of the importer's failure to comply with the certification requirements of this section the importer may be subject to the assessment of marking duties and penalties as provided under paragraph (e) of this section.

10. It is proposed to amend redesignated § 134.34 as follows:

a. Revise the heading;

b. Redesignate current paragraphs (b), (c), (d), (e) and (f), respectively, as new paragraphs (c), (d), (e), (f) and (g);

c. Add a new paragraph (b); and

d. Add an example after redesignated paragraph (f).

The revisions and additions will read as follows:

§ 134.34 Repacked marked articles.

* * * * *

(b) *Repacker.* A ''repacker'' means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but, as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example. The importer enters articles from China which are individually marked with their country of origin. He sells the articles in their bulk packaging to a customer in the U.S. who processes the articles and also repacks them in bulk for sale to a third party. The third party repacks them into blister packs for sale to retail customers. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). However, the blister packages obscure the country of origin marking on the article. Although it is clear that the articles will be repackaged for retail sale, the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements. In this example, having reasonable knowledge of the subsequent repacking of the articles into retail containers after release from Customs custody imposes an obligation upon the importer to notify its U.S. customer of the marking requirements and to provide the required certification to the port director. Since the importer has failed to comply with the certification requirements of this provision, and the retail packages obscure country of origin marking, the importer may be subject to duties and penalties as provided under paragraph (f) of this section.

* * * * *

§ 134.47 [Removed]

11. It is proposed that § 134.47 (19 CFR 134.47) be removed.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 19, 2000.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–1682 Filed 1–25–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105089–99]

RIN 1545–AX38

Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance relating to nonqualified preferred stock. The proposed regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain reorganizations and distributions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for 10 a.m., May 31, 2000, must be received by May 10, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105089–99), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105089–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard E. Coss, (202) 622–7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 354, 355, 356, and 1036 of the Internal Revenue Code (the Code). Section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105–34, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, these sections, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) (NQPS) received in an exchange or distribution will not be treated as stock or securities but, instead, will be treated as ''other property'' or ''boot.'' As a result, the receipt of NQPS in a transaction occurring after the NQPS provisions are effective will, unless a specified exception applies, result in gain (or, in some instances, loss) recognition. Section 351(g)(4) provides authority to issue regulations to carry out the purposes of these provisions.

Section 351(g)(2)(A) defines NQPS as preferred stock if (1) the holder has the right to require the issuer or a related person to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase the stock, (3) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate on the stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. Factors (1), (2), and (3) above will cause an instrument to be NQPS only if the right or obligation may be exercised within 20 years of the date the instrument is issued and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

These rights or obligations do not cause preferred stock to be NQPS in certain circumstances described in section 351(g)(2)(C). In one such