Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of December 19, 1996 (61 FR 58323, November 14, 1996). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 4, 1997.

Issued in Renton, Washington, on August 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–22042 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 97–72]

RIN 1515–AB82

Country of Origin Marking

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations 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 other words of similar meaning. Customs believes that, consistent with the statutory requirements of 19 U.S.C. 1304, the country of origin marking only needs to satisfy these requirements if the name of the other geographic location may mislead or deceive the ultimate purchaser as to the actual country of origin.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

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

Section 134.46, Customs Regulations (19 CFR 134.46) provides that 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 locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, 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.

Section 134.46 was promulgated pursuant to the statutory authority of 19 U.S.C. 1304(a)(2), which provides that the Secretary of the Treasury may by regulations require the addition of any words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser.

A strict application of § 134.46 would require that in any case in which a non-origin locality reference appears on an imported article or its container, the actual country of origin of the article must appear in close proximity and in comparable size lettering to the locality reference preceded by the words ''Made in,'' ''Product of,'' or other words of similar meaning.

Because Customs believes that the strict requirements of § 134.46 are not always necessary to ''prevent deception or mistake as to the origin of the article'' in accordance with 19 U.S.C. 1304, Customs proposed to modify § 134.46 in a Notice of Proposed Rulemaking published in the **Federal Register** (60 FR 57559) on November 16, 1995.

In that document, Customs also proposed to remove § 134.36(b), which provides that an exception from marking shall not apply to any article or retail container bearing any words, letters, names or symbols described in § 134.46 or § 134.47 which imply that an article was made or produced in a country other than the actual country of origin. Since the special marking requirements of § 134.46, as proposed to be amended, would be triggered only when the the marking appearing on an imported article or its container is capable of misleading or deceiving an ultimate purchaser as to the actual country of origin of the article, § 134.36(b), which serves the same purpose, would be redundant and no longer needed.

The proposal to modify § 134.46 reflected Customs practice in applying the regulation. Customs has applied a less stringent standard in determining whether the country of origin marking appearing on an imported article or its container is acceptable. That is, Customs takes into account the question of whether the presence of words or symbols on an imported article or its container can mislead or deceive the ultimate purchaser as to the actual country of origin of the article. Consequently, if a non-origin locality reference appears on an imported article or its container, Customs applies the special marking requirements of § 134.46 only if it finds that the reference may mislead or deceive the ultimate purchaser as to the actual country of origin of the imported article. If Customs concludes that the non-origin locality reference would not mislead or deceive an ultimate purchaser as to the actual country of origin of the imported article, Customs' policy is that the special marking requirements of § 134.46 are not triggered, and the origin marking only needs to satisfy the general requirements of permanency, legibility and conspicuousness under 19 U.S.C. 1304 and 19 CFR part 134. This less stringent application is evidenced in

numerous Customs headquarters ruling letters.

Analysis of Comments

A total of 17 entities responded to the proposal. Fourteen respondents supported the proposal, although some suggested certain changes. Three commenters opposed the amendment.

Comments Supporting Customs Proposal

Comments: One commenter stated that the proposed amendment to § 134.46 would provide additional flexibility in accommodating the country of origin marking on the labels of its food products, many of which have very limited surface areas available for labelling because of their size (*e.g.*, small bags of candy, snacks, candy bars, gum).

Two commenters stated that references to places other than the country of origin are not necessarily misleading. The context must be considered. These two commenters believe that the proposed amendment would bring the country of origin marking regulations into closer conformity with the purpose and congressional intent of section 1304 and would serve the goal of informed compliance by bringing the country of origin marking regulations into closer conformity with positions taken in certain Customs rulings.

Two other commenters stated that if the proposed amendment is adopted, all rulings which require proximity even when there is no realistic possibility of confusion should be revoked. They specifically mentioned T. D. 86–129 of June 26, 1996, which currently requires that the country of origin statement on footwear and its packaging must appear in close proximity to any non-origin reference, even in circumstances where the non-origin reference would not be misleading or deceptive to the consumer. These commenters asked why shoe boxes, for example, should be held to a higher standard of compliance than other products, such as wearing apparel, where a design/decoration exception can be used for not applying the stricter marking requirements of § 134.46.

Another respondent believes that the proposal will enhance harmonization between the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms (ATF) regarding country of origin labelling requirements of imported foreign origin alcoholic beverages. ATF labelling specialists are aware of the general Customs requirement that country of origin markings should be located on all labels of imported foreign alcoholic beverages and that these markings should meet the general requirements of permanency, legibility and conspicuousness. However, ATF labelling specialists are not usually aware of the specifics of Customs regulations or Customs rulings which interpret Customs regulations. Therefore, ATF labelling specialists may approve a label for ATF purposes which is not in strict accordance with Customs requirements.

Finally, one commenter noted its belief that the Customs proposal is consistent with the World Trade Organization Rules, Article 4.5.1. of the Codex Standard for the labelling of prepackaged foods (Codes STAN 1–1985, Rev. 1–1995). This rule provides that the ''country of origin shall be declared if its omission would mislead or deceive the consumer''. According to the Codex standard, it is not required that the country of origin be marked in close proximity to the words indicating a geographic non-origin location.

Response: Customs agrees with the above comments. Any recipient of a prior ruling which may be inconsistent with this final rule should request reconsideration of such ruling in the context of the amended § 134.46.

Comments Supporting Customs Proposal With Suggested Changes

Comment: One commenter supports Customs proposal but suggests that § 134.46 be amended to read that a country of origin mark must appear in close proximity to a non-origin geographical reference only if the reference ''will mislead or deceive the ultimate purchaser''. This commenter states that the words ''may mislead or deceive'' used in the proposed regulation will lead to subjective and differing interpretations. He suggests that one way of remedying this problem is to permit an importer to submit statistically significant studies concerning consumer perception of a particular non-origin geographical reference in order to demonstrate that the reference does not mislead or deceive the average consumer.

Another respondent supporting the proposal suggests that the word ''may'' be replaced by ''is likely to'' in the final rule if adopted. This will insure that the § 134.46 stricter marking requirements will be imposed not when there is a mere possibility, but rather a likelihood, of misleading or deceiving the ultimate purchaser.

Response: Customs does not agree that the word ''may'' as proposed in the amendment to § 134.46 should be changed to ''will'' or ''is likely to.'' Customs believes that the ultimate purchaser is provided with the greatest assurance and protection against being misled or deceived by non-origin marks by granting Customs the discretion to decide on a case-by-case basis whether a mark ''may mislead or deceive an ultimate purchaser as to the actual country of origin.'' As a result, Customs is able to be more flexible in deciding not to apply the stricter marking requirements of § 134.46 in every instance where a mark has a non-origin type reference. The word ''will'' or the phrase ''is likely to'' could inhibit accomplishment of these goals. Therefore, Customs does not believe that a change in the wording of the proposed amendment is necessary.

Comment: One commenter supports Customs proposal, but suggests that if Customs adopts the proposal, it should also provide an exception for manhole covers, rings, frames and assemblies thereof covered by 19 U.S.C. 1304(e). This commenter believes that in the absence of such an exclusion from the scope of this regulation, it possibly could be interpreted as ignoring the statutory requirements of section 1304(e).

Response: Section 1304(e) of title 19 United States Code provides that:

> No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

Since the special country of origin marking requirements for these articles in 19 U.S.C. 1304(e) are statutory, rather than regulatory as the requirements of § 134.46 are, the proposed change, if adopted, would have no effect on these statutory requirements. The amendment of § 134.46 will not implement any of the marking exceptions under 19 U.S.C. 1304(a)(3), and therefore will have no impact upon the general marking requirements of § 1304(e). If the proposed amendment to § 134.46 is adopted, these articles still must satisfy the statutory marking requirements of § 1304(e), regardless of § 134.46 marking. Therefore, Customs does not agree with the suggestion.

Comment: One commenter supports Customs proposal but also encourages Customs to extend this initiative to situations arising under § 134.47 (displaying the name of a place other than the true country of origin as part of a trademark, trade name or souvenir). The commenter states that Customs practice in considering whether to apply § 134.47 also involves an analysis of

potential consumer confusion arising from the use of a trademark displaying the name of a place other than the country of origin. Thus the proposed amendment would seem logically applicable to § 134.47. Furthermore, since Customs in its Notice views § 134.36(b) as aimed essentially at combating confusing, misleading, or deceptive marking, and as section 134.36(b) in turn identifies as equally confusing, misleading or deceptive those types of markings defined both by §§ 134.46 and 134.47, it would seem that § 134.47 is as good a candidate for the proposed amendment as is § 134.46. Both are equally aimed at avoiding confusion to the ultimate purchaser.

Response: Customs agrees with the commenter that Customs proposal of applying the stricter marking requirements of § 134.46 only if the non-origin reference ''may mislead or deceive the ultimate purchaser as to the actual country or origin'' should be applied to trademarks, trade names or souvenir markings which depict non-origin references. However, Customs does not agree that this change can be made under the existing proposal, but that a new proposal is required. Therefore, Customs will issue a new notice of proposed rulemaking proposing to either amend § 134.47 consistent with the determination in this document or to remove § 134.47 since § 134.46, as amended, will effectively apply to any non-origin type reference, including those which are part of a trademark, trade name or souvenir marking.

Comment: One commenter suggests that Customs in its final rule set forth some examples of cases where the non-origin reference would likely mislead or deceive the ultimate purchaser as to the actual country of origin of the article.

Response: Customs agrees that samples of cases where the non-origin type reference ''may mislead or deceive the ultimate purchaser as to the actual country of origin of the article'' would assist the importing community in better understanding the proper use of § 134.46. Therefore Customs offers the following examples of non-origin markings which Customs consistently has ruled to be misleading or deceiving to an ultimate purchaser, thus triggering the requirements of § 134.46 that the country of origin appear in close proximity and in comparable size lettering to the non-origin marking preceded by the words ''Made in,'' ''Product of,'' or other words of similar meaning. In each of these examples, the country of origin of the imported article is foreign.

Example 1. ''A product of ABC Corp., Chicago, Illinois.''
Example 2. ''Manufactured by ABC Corp., California, U.S.A.''
Example 3. ''Manufactured and Distributed by ABC, Inc., Denver, Colorado.''
Example 4. ''Packed for ABC Corp., Greenville, South Carolina.''

Comments Opposing Customs Proposed Regulation

Comment: One commenter who opposed Customs proposed regulation believes that finalization of the proposed amendments would be ill-advised. This commenter urges Customs either to withdraw the proposed amendment in its entirety or to modify the amendment to maintain the existing proximity and lettering comparability requirements in cases where the reference to the U.S. is made in the context of a statement relating to any aspect of the production or distribution of the product (*e.g.*, ''Designed in U.S.A.,'' ''Made for XYZ Corp., California, U.S.A.,'' or ''Distributed by ABC, Inc., Colorado, U.S.A.''). Specifically, the commenter is concerned that the FTC's stringent policy of generally limiting the use of ''Made in U.S.A.'' claims to those products that are ''all or virtually all'' of U.S. content effectively prohibits U.S. firms which add a substantial percentage of a product's value in the U.S. from labelling it as U.S. origin. At the same time, importers are regularly permitted by Customs to label wholly foreign-made products with inconspicuous statements of the foreign origin, although these products may be festooned with American flags, brand names which expressly refer to the U.S., or statements (*e.g.*, ''Designed in U.S.A.,'' ''Made for [U.S. importer's name and address]''), which could mislead the consumer into assuming that the article was produced in the U.S. The only way to ensure that such statements regarding operations performed in the U.S. do not mislead consumers is to insist that they be coupled with the required country of origin marking in accordance with § 134.46. Furthermore, if Customs decides to proceed with the proposal or some variation of it, Customs should do so only after the conclusion of the FTC's workshop and the FTC's larger review proceeding, so that relevant information concerning consumer perception gathered in the FTC proceeding can be considered by Customs in connection with the proposed amendment to § 134.46.

Response: Customs agrees that references to the U.S. made in the context of a statement relating to any aspect of the production or distribution of the products, such as ''Designed in U.S.A.,'' ''Made for XYZ Corp., California, U.S.A.,'' or ''Distributed by ABC Inc., Colorado, U.S.A.,'' are misleading to the ultimate purchaser and would still require country of origin marking in accordance with § 134.46, even as amended by the proposal. Therefore, Customs disagrees with the idea that these types of markings would be allowed under the proposed amendment to § 134.46. In the prior comment analysis, these types of statements have been cited as examples of misleading and deceptive statements triggering the special marking requirements of § 134.46. Also, Customs does not agree that it is necessary to consider the FTC's review of consumer perception gathered during the FTC's ''Made in USA'' workshop in making its decision as to the issuance of the final rule amending § 134.46. Customs believes that determining whether a non-origin type reference ''may mislead or deceive an ultimate purchaser as to the actual origin of the article'' should be limited to the mark itself and its effect on the ultimate purchaser, not based upon extrinsic evidence of consumer perception. If Customs were required to review information about consumer perception when making a determination as to whether the non-origin reference may be misleading or deceiving to the ultimate purchaser, rather than just reviewing the mark itself as is Customs present practice, this could result in long delays in merchandise being released.

Comment: One commenter opposing Customs proposal believes that Customs should tighten the enforcement of the country of origin marking regulations, rather than make them more lenient.

Response: Customs does not agree that adopting the proposed amendment would make the marking requirements for imported foreign articles more lenient. Customs has consistently applied the standard of ''whether the non-origin reference may mislead or deceive an ultimate purchaser as to the actual origin'' in practice and in its rulings when determining whether a non-origin type reference triggers the special marking requirements of § 134.46. As a general rule, whenever § 134.46 is applicable, the article already contains at least one country of origin marking. This section has triggered additional markings on an automatic basis. The only difference adopting the proposed amendment will make is that the standard that Customs has been applying will be codified so the public will be informed and have knowledge of it. The intent of the marking statute is to indicate to the

ultimate purchaser the country of origin of a foreign article and at the same time protect an ultimate purchaser from misleading or deceptive non-origin type references. The proposed amendment to § 134.46 effectively accomplishes these goals. It also gives the Customs field offices discretion as to whether the stringent marking requirements of § 134.46 should be applied in situations where non-origin type references appearing on the article or its container are clearly not misleading or deceiving as to the actual origin of the imported article.

Comment: Another commenter opposes Customs proposed regulation because he believes that the proposed change would open the door to litigation due to differing opinions as to what is ''misleading or deceiving.'' This commenter observes that every time Customs sends out a Notice of Redelivery for a marking violation for merchandise which is marked with a country or locality other than the country or locality in which the merchandise was manufactured or produced, the recipient of that Notice will respond that the marking ''will'' not mislead or deceive the ultimate purchaser in the U.S.

Response: Customs disagrees that the proposal would open the door to litigation due to the differing opinions as to what is ''misleading or deceiving.'' The proposed amendment applies a standard based on whether the non-origin type reference ''may mislead or deceive an ultimate purchaser as to the actual country of origin of the article'' rather than ''will'' as the commenter mistakenly states, so that every case does not become a question of fact, as the commenter suggests.

Conclusion

In accordance with the analysis of comments above and after further consideration, Customs concludes that the proposed amendments to §§ 134.36(b) and 134.46 should be adopted as proposed. It is noted that certain editorial changes are made to § 134.46 which are not substantive in effect. It is also noted that Customs intends to issues a new Notice of Proposed Rulemaking regarding § 134.47, as discussed earlier.

Regulatory Reflexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this regulation eases the country of origin marking requirements and thus reduces the regulatory burden, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in Part 134

Customs duties and inspection, Labeling, Packaging and containers.

Amendment to the Regulations

For the reasons set forth in the preamble, part 134 of the Customs Regulations (19 CFR Part 134) is amended as set forth below.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues 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.

§ 134.36 [Amended]

2. Section 134.36 is amended by revising its heading to read ''Inapplicablity of Marking Exception for Articles Processed by Importer'', removing the designation and heading of paragraph (a) and removing paragraph (b).

3. Section 134.46 is revised to read as follows:

§ 134.46 Marking when name of country or locality other than country of origin appears.

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 article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, 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.

George J. Weise,

Commissioner of Customs.

Approved: July 1, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–22034 Filed 8–19–97; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8730]

RIN 1545–AT32

Allocations of Depreciation Recapture Among Partners in a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation of depreciation recapture among partners in a partnership. The final regulations amend existing regulations to require that gain characterized as depreciation recapture be allocated, to the extent possible, to the partners who took the depreciation or amortization deductions. The final regulations affect partnerships (and their partners) that sell or dispose of certain depreciable or amortizable property.

DATES: These regulations are effective August 20, 1997. For dates of applicability of these regulations, see §§ 1.704–3(f) and 1.1245–1(e)(2)(iv).

FOR FURTHER INFORMATION CONTACT: Daniel J. Coburn, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) relating to the characterization and allocation of depreciation recapture among partners in a partnership. Section 1245 of the Internal Revenue Code requires taxpayers to recharacterize as ordinary income some or all of the gain on the disposition of certain types of business properties. The amount recharacterized as ordinary income (depreciation recapture) is the lesser of (1) the gain realized on the disposition, or (2) the total deductions allowed or allowable for depreciation or amortization from the property.

On December 12, 1996, the IRS published in the **Federal Register** (61