

elsewhere in the regulations. Another commenter recommended that the word "for" after "month" be deleted and replaced with "within".

Customs Response: Regarding the first suggestion, the purpose of these regulations is to implement 19 U.S.C. 81c(d). That statutory provision only applies to crude petroleum refineries in foreign trade zones. Therefore, there is no basis to extend these regulations to "production facilities." The suggestion to remove the reference to final products consumed or removed from the subzone has not been adopted since the statute provides an attribution formula to be used at specific subzones. The word "for" is shorter than "within" and there is no change in substance.

Comment: One commenter proposed addition of a definition of "Petroleum" to read as follows:

Petroleum means a feedstock listed on the top line of the tables set forth in T.D. 66-16 and includes any hydrocarbon feedstock produced from natural gas liquids or comprised of natural gas liquids.

Customs Response: Customs disagrees that such a definition is necessary and, therefore, has not included this definition in the final rule.

Comment: Two commenters recommended that the phrase "listed on the top line of the tables set forth in T.D. 66-16" be replaced with "as defined herein into final products as defined herein". One commenter suggested that the following phrase be added at the end of proposed § 146.92(f):

* * * and includes any facility that processes a hydrocarbon feedstock utilizing one or more of the units in the definition of a refinery operating unit.

Two other commenters advocated renaming this definition "Petroleum refinery or production facility" and then adding the following:

Production facility means a facility that primarily converts hydrocarbon feedstocks, light olefins, aromatics and their derivatives into primarily light olefin products such as ethylene or propylene or other products such as toluene, benzene, or derivatives of olefins and aromatic products such as cyclohexane, acrylates, alcohols, caprolactam, or other petrochemical products.

Customs Response: As previously stated, there is no authority to extend the application of 19 U.S.C. 81c(d) beyond a crude petroleum refinery.

Comment: Two commenters proposed deletion of "market" and "each month" from the definition in proposed § 146.92(g).

Customs Response: Customs disagrees with this suggestion. A refiner has the

option to use the market value of each product or a published standard value such as Platts.

Comment: Two commenters suggested addition of the phrase "is an inventory control" before the word "method" in proposed § 146.92(h) and replacement of the phrase "set forth in T.D. 66-16" with "as verified and adopted by the Secretary of the Treasury".

Customs Response: The suggested changes have not been adopted. Producibility is not an inventory control because it does not reflect actual feedstocks in inventory at any given time. It is a statutory method to account for import duties owed on privileged foreign feedstocks. The Industry Standards of Potential Production are set forth in T.D. 66-16 and, even if that Treasury Decision is modified in the future, the reference will always be to "T.D. 66-16 as modified by T.D.—".

Comment: Four commenters suggested replacement of the definition in proposed § 146.92(i) with the following language:

Relative value means a factor assigned to each final product attributed to the separation from a privileged foreign feedstock equal to the ratio of its "price of product" to the average "price of product" for all final products at the time of separation.

Customs Response: Customs disagrees with this suggestion because "relative value" is a dollar value assigned to products and not a factor. Therefore, the definition remains as proposed.

Comment: Two commenters suggested addition of "or production operating unit" to the title of § 146.92 and insertion of the following language in the definition:

Production operating unit means a unit in a production facility in which feedstock is processed such as a thermal cracking furnace or distillation tower.

Four commenters suggested deletion of proposed § 146.92(j) (definition of "Refinery operating unit") in its entirety. Alternatively, one commenter suggested the definition should read as "a facility within a refinery wherein feedstocks lose their unique physical identity or may undergo changes in physical characteristics". Another commenter agreed with the proposed definition but also suggested adding the words, "including, but not limited to, API gravity, distillation traits, chemical characteristics, etc." Yet another commenter proposed deletion of any reference to "operating unit" in this section and in proposed §§ 146.93(a) (1) and (4), 146.93(b), 146.94(a), and 146.96(a)(1).

Customs Response: Customs agrees with the position asserted by the

commenters that the manufacture and manipulation of feedstocks begins on admission to a refinery subzone because a refiner deliberately mixes various feedstocks on admission to achieve optimum characteristics for processing. For that reason, proposed § 146.92(j) is unnecessary and has been deleted.

Based on the assertion by refiners that the mixing occurs on admission, the admission of feedstock in nonprivileged status will be binding and a post-admission request for privileged status will be denied unless the refiner establishes that the feedstock was not manipulated or manufactured to effect a change in tariff classification. A new § 146.93(e) has been added to reflect this position.

Comment: Two commenters suggested revising proposed § 146.92(k) to read as follows:

Time of separation in the case of privileged foreign feedstock means the manufacturing period in which such feedstock is deemed to have been separated into two or more final feedstocks.

Customs Response: Customs disagrees with this suggestion since it merely adds words without changing the substance of the definition.

Comment: Three commenters proposed inclusion of the following language in proposed § 146.93(a) immediately following "Attribution" and before "(1) Producibility":

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery zone must be attributed to feedstock processed within said petroleum refinery zone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized inventory control methods set forth in this section. Records may be maintained on a weight or volume basis.

Two commenters suggested that the phrase "have been introduced into a refinery operating unit" in proposed § 146.93(a)(1) be replaced with "are eligible for attribution, as set forth in paragraph (b), of this section * * *". Another commenter proposed replacement of the same phrase with "are eligible for attribution, as set forth in paragraph (a)(4) of this section * * *". A third commenter recommended replacement of the same phrase with the words "are eligible for attribution * * *".

Two other commenters suggested the inclusion of the phrase "or production operating unit" after "refinery operating unit".

Customs Response: Because Customs accepts the assertions of refiners that