



Technical Bulletin 00-2

IFIA Americas Committee Inc.

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July 15th, 2000

U.S. Customs Service Final Rule on Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

Introduction

On September 7, 1999, the U.S. Customs Service ("Customs") promulgated a final rule on the accreditation of commercial testing laboratories and approval of commercial gaugers.

The IFIA Americas Committee provided extensive comments to Customs during the rule's public comment period. In the final rule, Customs adopted a majority of the IFIA comments, which in our opinion, averted some major problems, including added costs to the industry.

The purpose of this bulletin is to review the significant areas of interest to the industry and to highlight the IFIA comments thereto.

Customs sought public comment in the following broad areas: program expansion, third-party accreditation/approval entities, methodology, notification, proficiency testing, fee structure and multiple locations, sample retention, status of an analysis report where Customs also analyzes the sample, disclosure of testing procedures and methods, subcontracting, limiting gaugers activities to petroleum products, gauging procedures, gauger equipment requirements in closed-system measurements, assessment of penalties, penalties/loss of revenue/liquidated damages, current approval and future regulation, Small Business Administration, movement of goods in international commerce, and statement of fee schedule.

IFIA comments covered the following areas:

- Methodology – Specification of Test Methods
- Five-Day Notification
- Proficiency Testing
- Fee Structure
- Sample Retention Policy
- Subcontracting
- Monetary Penalties
- The Terms "Current Approval" and "Future Regulation"
- Other Important Provisions

These comments are explained, on the following pages, including Custom's response.

Chairman: G. Lees - Executive Director: M. Bush - Secretary: C. Updike

3942 North Upland Street, Arlington, VA 22207
Tel: (703) 533-9539
Fax: (703) 533-1612
E-mail: Ifianac@aol.com



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Methodology – Specification of Test Methods

IFIA expressed concern over specification of test methods without industry input.

Customs agreed noting that any laboratory seeking accreditation/reaccreditation can submit with its application to the Executive Director of Customs testing methods it believes are more appropriate than those designated by Customs.

Five-Day Notification

IFIA expressed concern that the requirement of a five day notification of change in legal name, address, etc. was unduly burdensome and impractical, especially for such items as staffing, equipment, instruments, etc. and suggested a semiannual notification.

Customs agreed in part with the latter, but retained the former noting that changes in legal name and address are substantive changes that affect the accreditation/approval of the facility and Customs must be able to maintain accurate records.

Proficiency Testing

IFIA expressed concern over the need for Customs to develop their own proficiency testing program in light of programs, such as the Laboratory Cross Check Program, available through the American Society of Testing and Materials (“ASTM”).

Customs agreed and revised its regulations such that proficiency testing through check samples “may” be required, rather than “will” be required. This will allow Customs to consider such programs during the reaccreditation/reapproval process, but not preclude Customs from developing their own programs if necessary.

Fee Structure

IFIA commented that the proposed accreditation fees were high and the structure punitive to organizations that operate commercial gauger and commercial laboratories on multiple commodities from the same site. In addition, variable costs appeared high, especially for background investigations, and IFIA requested clarification on how variable costs for large commercial organizations with multiple locations will be handled.



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While Customs did not agree to change its fee structure based upon its review of current private and public accreditation programs, *Customs did provide an explanation on how variable costs will be handled for large organizations with multiple locations*, noting that Customs will “bundle” these costs when they apply to more than one site so that costs will be fairly apportioned between applicants.

Sample Retention Policy

IFIA commented that an across-the-board sample retention period of one year was too restrictive, pointing out that special consideration should be made where the sample is perishable or hazardous.

Customs agreed and reduced the retention period for both perishable and nonperishable samples to four months, unless the samples are the subject of litigation.

Subcontracting

IFIA commented that there should be no reason why one Customs-approved laboratory should not be able to subcontract to another Customs-approved laboratory, and requested clarification on what constitutes subcontracting within companies owned or managed by the same parent organization.

Customs agreed and revised the proposed regulations to allow subcontracting between Customs-accredited/approved facilities.

Monetary Penalties

IFIA expressed concern that there was no notice or due process protection before the imposition of penalties and argued that specific guidelines should be established so that variations in interpretations of the regulatory provisions at different ports could be avoided.

Customs agreed and amended the proposed regulations to require advance notice (30 calendar days) of impending penalties. In response to IFIA's concern about uniformity of interpretations, Customs noted that decisions or orders imposing monetary penalties will be made by the Executive Director, Laboratories and Scientific Services.



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The Terms “Current Approval” and “Future Regulation”

IFIA requested a clarification of these terms. Customs stated that the terms apply to already accredited/approved laboratories/gaugers. This being the case, the new fees established by these regulations (for those laboratories/gaugers accredited/approved prior to December 8, 1993) will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation (which is September 7, 1999). The effect of this is that the “grandfathered” laboratories/gaugers will only be required to pay “reaccreditation” fees.

Other Important Provisions

There were many other provisions included in the final rule, that while not specifically addressed by IFIA, relate to the inspection industry. They are as follows:

- Gaugers and laboratories will be accredited separately.
- Due to illegible signatures on reports, Customs will require the typing of the full name of signatory on the final report.
- Inspection documents need to specify the API standard that applies to the gauging, temperature measurement and sampling methods used on each inspection.

Conclusion

Working together, the inspection industry and the United States Customs Service have crafted a regulation that meets the needs of both parties. IFIA believes that some changes still need to be made in the current regulation and is committed to working with Customs to effect those changes.