

Assessment Procedure

Assessment means determination of duty liability.

Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under rule 7- rule 2(b)

Meaning of 'assessee' - Rule 2(c)

- any person who is liable for payment of duty assessed
- a producer or manufacturer of excisable goods
- a registered person of a private warehouse in which excisable goods are stored
- Includes an authorized agent of above persons.

Types of Assessments

Self Assessment- Rule 6

Provisional Assessment- Rule 7

Best of Judgment Assessment

Self Assessment Rule 6

- ◆ Assessee determines classification
- ◆ Assessee determines Valuation
- ◆ Assessee pays duty at appropriate rate
- ◆ Assessee file Monthly/Qty Returns

Assessee Declare in Self Assessment memorandum in the return that

- ◆ Value declared correctly
- ◆ Duty paid correctly
- ◆ GAR 7 Challan is genuine.

After submission of return by assessee, CEO will scrutinize the return

- ◆ Inspect assessee premises if require
- ◆ Verify the records and document
- ◆ Demand will be issued if necessary, based on verification

Provisional Assessment Rule 7

Assessee can request for provisional assessment in following circumstances

- ◆ Assessee is unable to determine the value of excisable goods
- ◆ Assessee is unable to determine rate of duty applicable.

Procedure:

- ◆ Application should be made to AC/DC requesting for Provisional Assessment stating reason
- ◆ AC/DC may allow Provisional assessment and state the rate of duty payable
- ◆ Bond to be executed (B2 bond) for differential rate of duty minus Probable final rate of duty and provisional duty.
- ◆ Returns/records should be marked as Provisional Assessed wide order no.....
- ◆ Time limit to complete final assessment 6 months from the date of P A order
- ◆ At assessee request Commissioner can extend further 6 months by writing reasons
- ◆ Chief Commissioner can extend time beyond the period of one year
- ◆ After final assessment, difference duty paid/refunded
- ◆ If assessee does not pay duty within 15 days Bond will be enforced

Interest Assessee to pay 13% ,department on refunds 6% from the first day of succeeding month from the amount determined till the date of payment

- ◆ Doctrine of unjust enrichment is applicable in case of refunds.

Assessee cannot do on his own Provisional Assessment. Provisional assessment is only at express order of AC/DC

Best judgment assessment

When B O J Assessment is made

- ◆ Where assessee fails to provide record /information for the purpose of assessment
- ◆ department is unable to issue demand

Burden on Assessee

- ◆ Burden to provide information for re-determination of duty is on assessee
- Assessment done be based on available information. Demand will be issued if necessary

Demands of Central Excise Duty Sec 11A

Demand of duty means excise department asking assessee to pay excise duty

Normally, excise duty has to be assessed at the time of clearance of goods and to be paid as per rule 8

- ◆ Sometimes it is possible that the duty paid may be lower than the duty actually payable, or
- ◆ Department may erroneously refund duty to assessee.

In such cases need for demand for duty will arise

Normally the following are Circumstances resulting demand

- ◆ Assessable value declared by assessee is not acceptable to Excise authorities.
- ◆ Classification and/or exemption notifications claimed by assessee are not acceptable to excise authorities.
- ◆ Excise duty paid at concessional rate though concession was not available.
- ◆ Treating dutiable goods as exempted goods/goods charged to nil rate of duty
- ◆ Clandestine removal, non-accounting of goods etc
- ◆ Clearance in name of dummy bogus units
- ◆ Duty erroneously refunded by department

Any other reasons due to which the excise officer is of the opinion that the duty paid is not correct

Issue of Show cause notice

- When duty is not levied or Not paid or
- has been short levied or short paid or
- erroneously refunded,

A notice can be issued by C E O asking the person why he should not pay the amount specified in the notice- sec 11 A (1)

Who can Issue of Show cause notice (SCN)

- Only CEO can issue
- SCN Contain date, name and address of assessee duty payable along with calculations

Serving of SCN

- By Register Post Acknowledgement Due to Assessee Address
- BY affixing at notable space of Assessee factory
- BY affixing Notice board of Excise office of assessee jurisdiction

Time limit to issue SCN

- One year from relevant date
- 5 years from relevant date in case of fraud, collusion, willful misstatement, violation of excise law with intention to evade duty, suppression of facts

➤ Relevant date means

S No	Circumstance	Relevant date
1	When assessee file return	Date of filling return
2	When assessee does not file return	Due date for filing of return
3	In case of Provisional assessment	Date of adjustment to final duty
4	In case of erroneous refund	Date of refund

5	In any other case	Date of payment of duty
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Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

Option to a person to pay duty with penalty after receipt of SCN sec 11A (1A)

- This option available only to assessee involving fraud, collusion mis-statement suppression of facts intention to evade duty etc.,
- Assessee can voluntarily pay duty full or in part as accepted by him with interest and Penalty equal to 25% of duty
- Such payment should be made within 30 days of receipt of SCN
- This is an additional facility given to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues more expeditiously
- In case of part payment, the remaining amount will be subject to regular proceedings as per the law.

Obligations of CEO after issue of SCN (Adjudication orders of CEO) sec 11 A (2)

- The CEO has to consider, the representation if any by person whom notice issued
- CEO should determine the duty payable **not exceeding** the amount specified in notice
- If the duty determined in excess of SCN issued, fresh SCN to be issued for excess amount
- **Where it is possible to do so** CEO should determine the amount of duty payable within six months or within one year in case of fraud, collusion, intention to evade duty etc., from the date of service of notice.
- The time limit of one year and six months for passing adjudication order are not mandatory,

Example:

Situation 1- Representation of Assessee fully acceptable- SCN to be dropped

Situation 2- Representation of Assessee fully not acceptable-duty to be determined

Situation 3- Representation of Assessee partly acceptable and partly not acceptable

Acceptable portion SCN to be dropped and non acceptable portion duty to be determined

Payment of duty by a person before receiving SCN Sec 11A (2B)

- This facility available only to person who has not paid short paid duty under normal circumstances. It is not available in case of fraudulent cases
- Assessee can also pay duty before receiving SCN
- Such payment of duty can be on the basis on his own ascertainment or ascertainment by CEO
- No penalty will be levied if assessee paid duty before issue of SCN(WEF 01.04.2010)
- Assessee should inform CEO about the payment in writing.
- CEO cannot issue show cause notice after receiving intimation from Assessee.
- If a person does not pay the duty as determined by CEO, CEO can proceed to recover the duty from a person by issue SCN, the time limit of one year will be reckoned from the date of receipt of information from a person

Interest for late payment of duty Sec 11 AB of CEA and 28 of Customs Act

◆ Where the duty payable as per SCN or as per duty determined by assessee or by CEO

◆ Interest is payable on duty @ 18% per annum

Period of Interest

◆ from the first day of following month of due date of duty payable to till the date of payment

◆ In case of erroneous refund from the date of refund

Example

Situation 1. September month removal- Due date for payment 5th October

- Interest payable from 1st November

Situation 2. March month removal- Due date for payment 31st March

- Interest payable from April 1st

Situation 3. Duty erroneously refunded on April 16th

- Interest payable from April 16th

Other points

- ◆ Interest payable even during the period of stay or appeal
- ◆ As per Sec 37 B CBEC has power to issue instructions to Commissioners
- ◆ If a person pays duty voluntarily as per Board instruction within 45 days from the date of issue of board circular, without reserving right to appeal in future, **no interest payable**. In all other cases interest payable on whole amount including amount already paid
- ◆ Where the duty determined is increased or decreased, interest is payable on the increased or decreased amount.

Penalty for short levy or non levy of duty in certain cases	Sec 11AC
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- Applicable only in case of demand arising in case of fraudulent cases
- Where the person payable duty as per adjudication order of CEO, person is liable to pay penalty equal to duty so determined.
- If the duty paid with in **30 days** from the date of communication of order of CEO penalty will be reduced to 25% of duty.
- Reduction in penalty of 75% is available only if duty and penalty of 25% paid with in 30 days
- If the duty is increased/decreased by the order of appellate authority penalty is also increased or decreased.
- It is clarified that *when the conditions spelled out under section 11AC are fulfilled*, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice. Circular No 889/09/2009 dt 21.05.2009
- Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage ie , if assessee pays duty, interest and the reduced penalty, benefit of reduced penalty is not available *within 30 days of the communication of the order of appellate authority*. Circular No 898/89/2009 dt 15.09.2009

Demand based on estimated production

- Applicable in case of clandestine removal,
- Clandestine removal means removals in name of dummy bogus units/removal of goods without invoice/without entry in DSA etc.

CE Officer can fix normal production based on

- installed capacity,
- raw material utilizations,
- labour employed,
- power consumed and
- such other relevant factors as necessary
- CEO will work out production and demand will be issued.

Recovery of Duty	Sec 11
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When Assessee fails/ or refuses to pay Duty/any sum due under CE ACT or Rules / sum of duty recovered from buyer and not credit to Government/duty determined by Settlement Commission not paid

Department can recover the above amount from any of the following modes

- ❖ By setoff against refund due to assessee (Example duty, interest, rebate, drawback)
- ❖ Attachment of excisable goods belonging to Assessee
- ❖ As Arrears of Land revenue by issuing certificate to district revenue collector (sale by auction all property except cooking vessels and cloths)
- ❖ Recovery from surety in case of surety Bond
- ❖ Recovery from sale of securities in security bond
- ❖ Recovery from partner of firm, if firm fails to pay
- ❖ Recovery from Legal heirs/Representative from the movable or immovable property inherited by the legal heirs
- ❖ Recovery from successor of business from all assets acquired in succession with the permission of Commissioner of Central excise
- ❖ Detain of movable and immovable property of assessee with permission of Commissioner, if duty not paid within 30 days .sale of property (sec 142 of customs applicable to Excise)
- ❖ Chief Commissioner can grant maximum 36 Monthly installments for duty payment (CCE Hyderabad trade notice).Mandatory Interest is payable

Payment of Duty under Protest

Payment of duty under protest covered in Chapter 13 Part III Para 4 of CBE&C's CE Manual, 2001

Circumstances:

- ◆ If assessee does not agree with classification of goods by Department and he file appeal

Procedure

- ◆ Intimate Ac/DC and Obtain dated acknowledgement.
- ◆ Payment of duty under protest only till appeal is decided
- ◆ All Invoices, returns, PLA, Challan indicate duty paid under protest
- ◆ After appeal disposal- difference duty if any to be paid or claim refund.
- ◆ If he does not file appeal, he cannot pay duty under protest after period of appeal is over.

Advantage

The time limit of one year for refund is not applicable.

Refund of Duty	Sec 11 B
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Assessee can claim refund when he has paid higher duty than required.

Such higher payment of duty may be due to

- ◆ wrong classification of goods
- ◆ treating exempted goods as dutiable goods,
- ◆ Pays higher duty to clear goods urgently

Who Can Claim Refund

- ◆ Assessee
- ◆ Buyer (FSD/SSD) if he does not pass burden to other

Procedure to claim refund of duty

- ❖ Application in Form No R along with supporting document as a proof for payment of duty , pre stamped receipt to made to AC/DC
- ❖ Refund less than Rs. 100 will not be entertained.

Time limit to claim for refund

- ◆ One year from relevant date

Relevant date means

1	In case of Export Rebate	
	Export through aircraft/vessel	Date of leaving aircraft/Vessel
	Export through vehicle	Date of leaving custom frontier
	Export through post	Date of dispatch of article
2	In case of Compound levy scheme	Date of reduction of duty
3	In Case of Exemption u/s 5 A	Date of exemption order
4	In Case of Provisional Assessment	Date of final adjustment of duty
5	In case of FSD/SSD	Date of Purchase of goods
6	In case of Order of court/Appellate authority	Date of order
7	In any other case	Date of payment of duty

Note: When duty paid under protest there is no time limit to claim refund.

Refund claim is scrutinized by AC/DC and will be sanctioned

Refund to assessee/buyer 11 B (2)

Refund amount instead of payment to manufacturer/buyer the amount will be credited to consumer welfare fund.

Refund of excise duty can be made to assessee /buyer only in following cases:

- ◆ Rebate of duty paid excisable goods exported out of India
- ◆ Rebate of excise on inputs used in manufacture of goods exported out of India (if he has not availed Cenvat credit)
- ◆ Refund of duty paid on inputs (if payable according to any rule or notification)
- ◆ To Manufacturer, if he has not passed on incidence of the duty to another person
- ◆ To Buyer, if he has borne the duty and if he has not passed on incidence of the duty to another person

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- ◆ It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer sec 12 B
 - ◆ In such cases, refund of excess duty paid to the manufacturer will amount to excess and un-deserved profit to him.
 - ◆ He will get double benefit – One from consumer and again from the Government.
 - ◆ At the same time, the duty is illegally collected and hence cannot be retained by Government.
 - ◆ In such cases, the refund due should be transferred to a Consumer Welfare Fund instead of paying it to the manufacturer.
 - ◆ The fund may be used for activities of protection and benefit of consumers.
- Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- ◆ When duty is paid under protest and only lower amount of duty is charged to customer
- ◆ Pre-deposit of duty pending appeal
- ◆ When duty is paid subsequent to clearance
- ◆ When contract is for price inclusive of all duties

- ◆ When debit note is raised by buyer and amount deducted from bill
- ◆ When credit note issued to buyer and buyer account is credited,
- ◆ Refund of export rebate/incentive.
- ◆ Deposit taken from buyer against possible liability of excise duty. And deposit refunded

Time limit to sanction and pay refund [section 11BB of CEA,/ section 27A of Customs Act

- ◆ Refund due must be sanctioned within three months from date of application.
- ◆ Delay in sanction refund beyond three months interest@ 6% p.a., immediately after expiry of three months till the date of refund

Refund in cases where levy is declared unconstitutional

If the levy has been declared as unconstitutional, refund claim can be made by way of suit or a writ petition. Such refund claim will also be subject to provision of unjust enrichment,

Power not to recover duty of excise not levied or short Levied as a result of general practice.	Sec 11C/ Sec 28 A of customs
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- Applicable in case of misinterpretation or wrong understanding of law both by the manufacturer and CEO
- Such wrong understanding was occurred in assessment resulting short levy of duty
- Wrong understanding was because of Bonafide mistake on either side
- Such mistake should be not because of collusion/fraud cases
- In such cases C G is empowered to make an order **not to recover/collect** such short levy
- If a manufacturer paid differential duty despite C G notification, he is entitled to refund subject to doctrine of unjust enrichment
- Time limit to claim refund is **6 months** from the date of C G Notification

Duties of excise collected from the buyer to be deposited with the Central Government Sec 11D/ section 28B of Customs Act]
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- Every person liable to pay duty, if he collect excess duty than assessed/ determined, paid/ he should pay such excess duty to credit of Central Government
- If a person does not pay the duty, CEO can issue SCN
- CEO after representation if any made by person CEO should determine duty
- Delay in payment to credit of Government interest @13% p.a., payable from the first day of succeeding month which duty payable. (sec 11 DD)
- The amount of duty paid by person will be adjusted in the final assessment
- If a person paid excess and if any surplus left after final assessment the excess amount will be refunded subject to doctrine of unjust enrichment

Provisional Attachment of Property in certain cases Sec 11DDA

- CEO can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so
- Such provisional attachment can be made in the course of proceedings where SCN was issued u/s 11 A and 11D
- Such provisional attachment can be made with the previous approval of Commissioner of excise by order in writing,
- Attachment order will be in force for a period of 6 months from the date of order
- Chief Commissioner has got power to extend time as he think fit.
- Total extension period by CC will be maximum two years

- Where the application made by assessee to Settlement Commission the period between from where the application made and order of settlement commission will be excluded in calculating the time limit of 6 months/ two years.

Special audit in certain cases Sec 14 A
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Circumstance under which special audit ordered

- ◆ In case of nature and complexity of the case
- ◆ the interest of revenue
- ◆ the value has not been correctly declared or determined

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆ Factory,
- ◆ office, depots, distributors or
- ◆ any other place, as specified by the C E O

Period for completion

- ◆ Maximum including extension 180 days.

Who can do the Special audit?

- ◆ Cost accountant, or Chartered Accountant nominated by the C C Excise./

Other Points

- ◆ Order can be made to Audit of the accounts even it the accounts audited under any other law
- ◆ Audit report will be submitted to C E O.
- ◆ Opportunity to be given to assessee if any material of audit report proposed to be utilized

Special audit in cases where credit of duty availed utilized is not within the normal limits

sec 14 AA

Circumstance under which special audit ordered

- ◆ Credit of duty availed /utilized not within limits
- ◆ Utilization of credit with fraud, willful misstatement, collusion etc

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆ Factory,
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Excise Departmental Checks

Visits of Officers

The Superintendent and Excise Inspectors working under him do occasionally visit factories.

And verify the records

Stock taking

New Central Excise Rules make no provision for 'store room' or 'stock taking'. However, it stock taking by excise authorities stock taking can be done of finished goods and Cenvat goods.

Road Checks

Surprise road checks are carried out to see that all goods moving are accompanied by duty paying documents.

Excise departmental audit/ 'EA-2000' [Excise Audit 2000]

An Audit section is attached to each Commissionerate. The Audit Party usually consists of inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. AC/DC and senior officers are also associated with the audit of large units. These audit parties visit factories periodically.

Frequency of audit

CBE&C has specified frequency of audit and time limit during which audit should be completed, as follows -

The schedule should be -

- ☐ All EOU units - mandatory audit every year
- ☐ Units paying duty through PLA over Rs. one crore per annum - 10 working days - to be audited every year
- ☐ Units paying duty of Rs. 10 lakhs to one crore per annum through PLA - 7 working days - to be audited at least once in two years
- ☐ Units paying duty less than Rs. 10 lakhs through PLA per annum - 5 working days - to be audited at least once in five years.

Duration of audit (5/7/10 working days as above) is the entire period spent on audit of a particular assessee from desk review to preparation of audit results. In case of audit of units paying less than Rs. 10 lakhs per annum through PLA, not more than three days should be normally spent in assessee's factory - CBE&C circular No. 731/47/2003-CX dated 1-8-2003.

EA-2000 AUDIT OF EOU - EOU in port cities are under administrative control of Commissioner of Customs. Since customs have no system of internal audit, the audit should be conducted by jurisdictional Commissioner of Central Excise.

Procedure of Excise Audit 2000 - Procedure of EA-2000 is explained in CBE&C's CE Manual, 2001, is as follows -

Selection of assessee

In each Commissionerate few units are selected based on 'risk factors', For example assessees who have bad track record (like evasion cases, major audit objections, past duty dues etc.) are given priority for conducting audit over those having clean record.

Desk review

Auditors assigned to assessee are required to gather advance information about assessee, from departmental records, published documents like balance sheet, annual statements and through market enquiries. This is done without interacting with assessee.

Gathering and Documenting assessee Information

At the stage of desk review, auditors will identify the areas which require closer examination. The auditor gather evidence based on documents and by a questionnaire

Touring of premises

The auditor then visits the unit of assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections, system of movement of goods and related

documents within the unit. This gives auditor overview of the procedure adopted by assessee and the possible loopholes through which revenue leakage can take place.

Audit Plan

Based on the experience and the information, the auditor prepares an 'audit plan'. Based on the plan the auditor selects some of the documents/records maintained by assessee for actual verification, as verifying all records is impossible. Plan can be altered the audit plan midway after obtaining approval of the superior officers.

Verification

This consists of verification of actual records with the returns submitted. Auditor may enquire about vague entries. .

Audit Objection and audit para

If auditor finds instances of short payment of duty, he is required to discuss the issue with assessee. If he is not satisfied with the explanation of assessee, he will record the same as 'audit objection' or 'audit para' in his draft audit report. If possible, quantification of duty short paid should be made on the spot and incorporated in 'audit para'. If this is not possible, a note may be made in audit report.

Audit report

At the end of verification, auditor prepares a 'Draft Audit Report' which incorporates all audit objections/audit paras. It discusses the issue in brief, reply or explanation of assessee, reason for auditor not being satisfied with the reply or explanations, amount of short payment (if tabulated) and recoveries of same, it could be made on the spot. The draft audit report is submitted to superior officers for review, and finalization.. If assessee has not paid duty on the spot, demand notices are issued to assessee by department.

Form of audit report

Report should be submitted in the as per prescribed form. Apart from other information, the report should contain 'Risk Loss Analysis', 'Trend Analysis' etc.

EA-2000 is a participative audit

The assessee is given full opportunity to explain his stand in the audit findings so that matters are resolved in full appreciation of legal position. Thus, EA-2000 is a participative audit.

CBEC instructions for EA audit 2000

Board has clarified that factories yielding annual revenue of Rs. 5 crores and above, or those availing annually Cenvat credit of Rs. one crore and above should be visited by Addl Commissioner/Jt Commissioner when the audit of factory is in progress. In addition, suspected units manufacturing commodities with particularly intricate complexities etc. may also be visited by Jt Commissioner (Audit) (that time - Dy Commissioner) -

The highlights of new system are as under -

- ☐ 15 days notice should be given before commencing audit.
- ☐ Audit will normally be completed in 5 to 7 days. If required, two audit teams may be deputed.
- ☐ Additional/Jt Commissioner (Audit) should join the team for some days. He should supervise audit notes/report and sign the same.
- ☐ Audit party will not issue any summons and powers of search, seizure or interrogation will not be exercised. If information is not supplied, they may refer the matter to Anti-Evasion wing of Commissionerate.

- ☐ Audit Wing will not issue show cause notices arising out of objections. The matter will be referred to Proper Officer (Jurisdictional Superintendent/Assistant/Deputy Commissioner).
- ☐ Proper data base will be created. Specially trained staff will be used.
- ☐ Workshop for trade and industry should also be organised
- ☐ An EA-Monitoring Cell consisting of 4-5 officers will be constituted headed by Commissioner. The cell will hold meetings once in fortnight and monitor the new audit system.
- ☐ Audit parties should check 'source documents/records' connected with production, manufacture, storage, delivery or disposal of goods, including raw materials; such as ledgers, inventory records, income tax returns, sales tax returns, balance sheets etc. Only relevant returns/records should be demanded.
- ☐ Audit work must be clearly documented in working papers. Summary sheet will be prepared.
- ☐ Assessee profile (database) shall be collected in standard prescribed format. Audit report will also be in prescribed format. It should be prepared within 20/25 days from commencement of audit. Scoring system has been evolved to evaluate audit report.
- ☐ Director General (Audit) will monitor the work of EA-2000.

Selective audit of such registered dealers will be carried out with prior approval of Additional commissioner. Advance intimation of 15 days will be given. However, preventive checks can be carried out by surprise visits without any prior intimation to dealers. However, prior approval of Jt Commissioner (Prev.) will be taken. - CCE, Mumbai IV TN 39/2000 dated 1-6-2000.

Comptroller and Auditor General of India also carry out audits of all assessees. These are called 'CERA' i.e. Central Revenue Audit. These audit parties audit accounts of excise as well as customs assessees. These audits are conducted in addition regular audit under other laws. Frequency of CERA Audits depends upon the importance and availability of time.

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