

U.S. Customs and Border Protection



BUREAU OF CUSTOMS AND BORDER PROTECTION

DEPARTMENT OF THE TREASURY

19 CFR PART 10

DOCKET NO. USCBP-2009-0015

CBP DEC. 09-46

RIN 1505-AC13

**“IMPORTED DIRECTLY” REQUIREMENT UNDER THE
UNITED STATES - BAHRAIN FREE TRADE AGREEMENT**

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, interim amendments to the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) which were published in the **Federal Register** on May 22, 2009, as CBP Dec. 09-17 to change certain provisions relating to the requirement under the United States-Bahrain Free Trade Agreement (BFTA) that a good must be “imported directly” from one BFTA Party to the other Party to qualify for preferential tariff treatment. The change involved removing the condition that a good passing through the territory of an intermediate country while en route from a Party to the other Party must remain under the control of the customs authority of the intermediate country. This change more closely conformed these regulatory provisions to the BFTA and the BFTA implementing statute.

DATES: This final rule is effective January 28, 2010

FOR FURTHER INFORMATION CONTACT: Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325-0041.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2004, the United States and the Kingdom of Bahrain (the Parties) signed the U.S.-Bahrain Free Trade Agreement (BFTA). The provisions of the BFTA were adopted by the United States with the enactment on January 11, 2006, of the United States-Bahrain Free Trade Area Implementation Act (the Act), Public Law 109-169, 119 Stat. 3581 (19 U.S.C. 3805 note).

On October 16, 2007, CBP published CBP Dec. 07-81 in the **Federal Register** (72 FR 58511), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the BFTA. The majority of the BFTA implementing regulations were included within new subpart N in part 10 of the CBP regulations (19 CFR subpart N, part 10). In CBP Dec. 08-28, published in the **Federal Register** on July 23, 2008 (73 FR 42679), CBP adopted the interim regulations set forth in CBP Dec. 07-81 as a final rule with two technical corrections.

Section 10.817(a) of the CBP regulations implementing the BFTA sets forth the basic requirement, found in Article 4.1 of the BFTA, that a good must be “imported directly” from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. In circumstances in which a shipment passes through the territory of a non-Party, § 10.817(a)(2) provided (prior to the publication of the interim amendments set forth in CBP Dec. 09-17 on May 22, 2009) that a good will be considered to be “imported directly” only if the good: (i) remained under the control of the customs authority of the non-Party; and (ii) did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than certain specified minor operations. Nearly identical language to that found in §10.817(a) appeared in § 10.822(a), relating to the application of the “imported directly” requirement to certain non-originating textile and apparel goods that qualify for preferential tariff treatment under an applicable tariff preference level (TPL).

Article 4.9 of the BFTA provides that a good shall not be considered to be “imported directly” from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party. Section 202(g) of the Act mirrors the language in Article 4.9 of the Agreement. Neither the BFTA nor the Act includes a requirement that a good must remain under the control of the customs authority

of a non-Party to qualify as having met the “imported directly” requirement when the good passes through the territory of a non-Party.

To more closely conform paragraph (a)(2) of §§ 10.817 and 10.822, CBP regulations, to the Agreement and the Act, CBP amended these regulatory provisions on an interim basis in CBP Dec. 09–17, published in the **Federal Register** on May 22, 2009 (74 FR 23950), by removing the “customs control” requirement. Specifically, CBP Dec. 09–17 removed paragraph (a)(2)(i) of §§ 10.817 and 10.822 and incorporated the text of paragraph (a)(2)(ii) of §§ 10.817 and 10.822 into the paragraph (a)(2) introductory text of those sections.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on May 22, 2009, CBP Dec. 09–17 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on July 21, 2009. No comments were received.

Conclusion

Accordingly, CBP has decided to adopt the interim rule published on May 22, 2009, without change.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 09–17 was published as an interim rule rather than as a notice of proposed rulemaking because, as noted above, the interim amendments involved a foreign affairs function of the United States. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Exports, Imports, Preference programs, Trade agreements.

Amendments to the CBP Regulations

Accordingly, the interim rule amending part 10 of the CBP regulations (19 CFR part 10), which was published at 74 FR 23950 on May 22, 2009, is adopted as a final rule without change.

Dated: December 22, 2009

JAYSON P. AHERN
Acting Commissioner
U.S. Customs and Border Protection

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, December 29, 2009 (74 FR 68680)]



BUREAU OF CUSTOMS AND BORDER PROTECTION

DEPARTMENT OF THE TREASURY

19 CFR PARTS 19 AND 144

DOCKET NO. USCBP – 2007 – 0080

CBP DEC. 09 – 48

RIN 1505 – AB85 CLASS 9 BONDED WAREHOUSE PROCEDURES

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with modifications set forth in this document, amendments proposed to title 19 of the Code of Federal Regulations with respect to the requirements applicable to the operation of Class 9 bonded warehouses, which are also known as “duty-free sales enterprises” or “duty-free stores.” The amendments in this document will extend the blanket withdrawal procedure for duty-free merchandise under certain circumstances and expand and create a uniform time period for Class 9 proprietors

to file an entry, provide written confirmation of certain shortages, overages, and damages, and to pay duties, taxes, and interest on overages and shortages. The amendments in this document will also permit Class 9 warehouses to utilize existing technological systems more effectively. In addition, this document sets forth technical amendments to the applicable regulations to extend the time period for which merchandise may remain in a bonded warehouse under certain circumstances. The amendments will facilitate the efficient operation of Class 9 warehouses and also ensure adequate records are maintained for U.S. Customs and Border Protection (“CBP”) trade enforcement purposes.

EFFECTIVE DATE: The final rule is effective on January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Office of Field Operations, (202) 344-2673, or Gary Schreffler, Office of Field Operations, (202) 344-1535.

SUPPLEMENTARY INFORMATION:

Background

Section 1555 of title 19 of the United States Code (19 U.S.C. 1555) sets forth provisions governing the establishment and operation of customs bonded warehouses. Section 1555(b) provides for a type of bonded warehouse, Class 9, also called a “duty-free sales enterprise” or “duty-free store.” As defined in § 1555(b)(8)(D), duty-free sales enterprise means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory of the United States. The regulations implementing § 1555(b), and which govern the operation of duty-free stores, are found within parts 19 and 144 of title 19 of the Code of Federal Regulations (19 CFR parts 19 and 144).

Notice of Proposed Rulemaking

On January 16, 2008, a notice of proposed rulemaking was published in the **Federal Register** (73 FR 2843; the “NPRM”) by U.S. Customs and Border Protection (“CBP”) that proposed to amend certain regulations governing the operation of duty-free stores in order to align the regulations with actual business practices and the use of modern technologies. The amendments were proposed in order to facilitate the operation of duty-free stores in a technological environment by streamlining outdated processes and requirements while ensuring adequate records are maintained for audit purposes.

In the NPRM, CBP specifically proposed amendments to §§ 19.6, 19.12, 19.36, and 144.37 of title 19 of the CFR (19 CFR 19.6, 19.12, 19.36, and 144.37). Section 19.6 describes the requirements for depositing merchandise into or withdrawing merchandise from a warehouse, including the requirements pertaining to blanket permits to withdraw. The proposed amendments to § 19.6(d)(1)(ii) would allow the appropriate Director, Field Operations, to extend the blanket withdrawal procedure in situations where the Class 9 warehouse and destination port are located within that Director's authority.

Section 19.12 provides for inventory control and recordkeeping systems. The NPRM proposed to modify § 19.12(d)(3), which sets forth the requirements for the accounting of merchandise in bonded warehouses and for the reporting of inventory theft, shortages, overages, and damages. In order to provide adequate time to comply with reporting and filing requirements, the NPRM proposed to modify § 19.12(d)(3) in order to afford Class 9 proprietors with 20 calendar days to provide written confirmation of any reported shortages, overages, or damages, and to require that an entry for warehouse be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery.

In addition, the NPRM proposed to modify § 19.12(h)(2), which lists the information required for the annual reconciliation report, in order to set forth special reporting rules for Class 9 warehouses. In this regard, under the proposal, § 19.12(h)(2)(ii) would allow for a reduced reporting requirement for Class 9 warehouse proprietors in cases where the proprietor successfully demonstrates, by application to the appropriate CBP port director, that shortages would be reported within 20 days of discovery. If the application were approved by the port director, the Class 9 warehouse proprietor would be permitted to submit a report that sets forth the company name; address of the warehouse; class of warehouse; dates when physical inventories and cycle counts occur; dates when resulting shortages and overages are reported to CBP; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

Section 19.36 sets forth the requirements for duty-free store operations, including guidance on the type of merchandise permitted in the sales or crib area of a Class 9 warehouse. The NPRM proposed to amend § 19.36(e) in order to provide an alternative to marking merchandise for Class 9 warehouse proprietors who maintain an electronic system capable of immediately identifying "DUTY-PAID" or "U.S.-ORIGIN" merchandise. In addition, the NPRM proposed changes that would ease the current requirement that conditionally duty-free merchandise either be physically separated from other mer-

chandise, or that the other merchandise be identified or marked as “DUTY-PAID” or “U.S. ORIGIN,” for those Class 9 warehouse proprietors who can immediately identify the duty status of goods through the use of an electronic system.

Section 144.37 sets forth the procedures for withdrawing merchandise from a warehouse for exportation. Under § 144.37(h)(2), a sales ticket, in triplicate, must be made out in the name of the purchaser with at least one copy to be retained by the Class 9 warehouse proprietor. The NPRM proposed to amend § 144.37(h)(2) in order to remove the “in triplicate” requirement and to allow the Class 9 warehouse proprietor’s copy to be maintained electronically, provided the port director is satisfied that the proprietor has the technological capability to immediately print the sales ticket upon the request of a CBP officer.

Comments were solicited in the NPRM of January 16, 2008. The comment period closed on March 17, 2008.

Discussion of Comments

One commenter, a trade association representing airport duty-free stores, responded to the solicitation of comments in the NPRM. A description of the comments contained in the submission and CBP’s analysis is set forth below.

Comment:

The commenter generally supports the streamlined reporting requirements for the annual reconciliation report for Class 9 warehouse proprietors set forth in proposed § 19.12(h)(2)(ii). However, the commenter notes that proposed § 19.12(h)(2)(ii) would still require the report to include a description of merchandise for each entry or unique identifier. The commenter states that this creates a great burden for Class 9 warehouse proprietors and requires a voluminous compilation of data. For example, the commenter states that there are literally hundreds or thousands of unique items in an entry, making it impossible to include them all in the annual reconciliation report in an automated way. In consideration of these concerns, the commenter requests that CBP delete the requirement in § 19.12(h)(2)(ii) that the annual reconciliation report include a description of merchandise for each entry or unique identifier.

CBP’s Response:

In order to facilitate trade and eliminate outdated or unnecessary requirements in the regulations, CBP continually monitors its requirements and thoroughly considers suggestions such as that set forth by the commenter. In analyzing the commenter’s recommenda-

tion, CBP field personnel have been consulted and it has been determined that the requirement that the annual reconciliation report include a description of merchandise for each entry or unique identifier remains essential for CBP audit purposes. In this regard, the information aids CBP auditors in the targeting and sample selection process undertaken during a warehouse review and specifically enhances CBP's efforts in ensuring duty-free merchandise is accounted for and exported in accordance with law. With respect to the commenter's statement that there may be hundreds or thousands of unique items in an entry making it a burden to compile the annual reconciliation report, CBP notes that there are instances where certain types of merchandise may be described in a general manner that is not overly burdensome, although this may not be acceptable for all situations. CBP recommends that duty-free store operators consult with the port director where the duty-free store is located as to whether certain merchandise can be described in a general manner. Accordingly, the requirement in § 19.12(h)(2)(ii) that the annual reconciliation report include a description of merchandise for each entry or unique identifier will not be eliminated in this final rule.

Comment:

The commenter generally supports the proposal to amend § 144.37(h)(2)(vi) in order to remove the sales ticket "in triplicate" requirement and to allow the proprietor's copy to be maintained electronically. However, the commenter does not believe that Class 9 warehouse proprietors should only be able to maintain the proprietor's copy electronically if the port director is satisfied that the proprietor has the technological capability to immediately print the sales ticket upon the request of a CBP officer. The commenter states that requiring Class 9 proprietors to first obtain the permission of the port director is not necessary because most, if not all, Class 9 warehouse proprietors maintain an electronic sales ticket register capable of printing out any number of sales tickets. In addition, it is stated that this requirement is a burden because Class 9 warehouse proprietors often operate in multiple ports and would have to obtain the permission of multiple port directors under the proposal.

CBP's Response:

CBP agrees with the commenter and § 144.37(h)(2)(vi), as set forth in the proposed rule, is amended in this final rule by eliminating the requirement that the Class 9 proprietor must first obtain the permission of the port director in order to maintain the proprietor's copy of the sales ticket electronically.

Comment:

The commenter suggests that CBP extend the period of warehousing set forth in the regulations so that merchandise can remain in a Class 9 warehouse for more than five years and not be destroyed. The commenter notes that there are situations when a Class 9 warehouse proprietor purchases an inventory of products that have a long shelf life, such as liquor, and that after the current five-year period ends these products have to be destroyed which is both expensive and wasteful. In order to remedy this issue, the commenter encourages CBP to update its regulations pursuant to the technical amendment of 19 U.S.C. 1557(a)(1) in § 1635 of the Pension Protection Act of 2006, Pub. L. 109–280, 120 Stat. 780, which provided CBP with the authority to permit products to remain in a bonded warehouse if a proper request is filed with the port director and good cause shown.

CBP Response:

CBP agrees with the proposal to permit products to remain in a bonded warehouse if certain conditions are met, but notes that the current regulations (§ 144.5) do not necessarily require destruction, but only removal after 5 years. Accordingly, pursuant to the authority granted by the technical amendment of 19 U.S.C. 1557(a)(1) in § 1635 of the Pension Protection Act of 2006, Pub. L. 109–280, CBP is making a conforming amendment in this final rule to § 19.6(b)(2), pertaining to the retention of merchandise (other than perishable articles and explosive substances other than firecrackers) in warehouse after withdrawal. In this regard, the last sentence of § 19.6(b)(2) will be amended by removing the reference to the 5-year warehouse entry bond period. In addition, a conforming amendment will be made in this final rule to § 144.5, pertaining to the period of warehousing. In this respect, amended § 144.5 will clarify that the total period of time for which merchandise may remain in a bonded warehouse must not exceed five years from the date of importation or such longer period of time as the port director may at his discretion permit upon proper request being filed and good cause shown.

Comment:

The commenter notes that § 144.32 currently requires that each withdrawal from a warehouse must include a detailed summary statement indicating the quantity of merchandise in the warehouse before withdrawal, the quantity being withdrawn, and the quantity remaining in the warehouse after withdrawal. The commenter suggests that CBP craft an exception to this requirement in the applicable regulation for Class 9 warehouses.

CBP Response:

Section 144.32 was not addressed in the NPRM set forth in 73 FR 2843 and CBP is not inclined to accept the commenter's suggestion because the requirement is essential for CBP post-audit purposes.

Comment:

The commenter suggests that CBP make changes in its Automated Commercial System (ACS) to facilitate the paperless release of "Type 21" (Warehouse) and "Type 22" (Re-Warehouse) entries.

CBP Response:

This issue is also outside the scope of this rulemaking. However, as CBP is continually exploring options to facilitate the entry process, the commenter's suggestion is appreciated.

Conclusion

After analysis of the comments and further review of matter, CBP has decided to adopt as final, with the changes discussed above in the comment discussion as well as below, the NPRM published in the **Federal Register** (73 FR 2843) on January 16, 2008.

In addition to the changes discussed above, this document also amends § 19.6(d)(1)(ii), which describes the requirements for depositing merchandise into or withdrawing merchandise from a warehouse, including the requirements pertaining to blanket permits to withdraw. In the NPRM, CBP proposed to amend § 19.6(d)(1)(ii) in order to permit the appropriate Director, Field Operations, to extend the blanket withdrawal procedure to cover a withdrawal from a Class 9 warehouse for transportation in bond to another port for "vessel supplies" in situations where a Class 9 warehouse and destination port are within that Director's authority. The language in § 19.12 has also been modified to clarify the reference to the annual reconciliation reports.

It is noted that the term "vessel supplies" is a term of art and refers to merchandise that is used as supplies (including equipment) upon, or in the maintenance or repair of, certain vessels (*see* 19 U.S.C. 1309 and 1317). Upon further consideration of the language employed, CBP believes that the use of the term "vessel supplies" in § 19.6(d)(1)(ii) causes confusion and does not accurately describe the duty-free merchandise that is withdrawn from a Class 9 warehouse for transportation in bond to another port for sale to passengers departing the United States on a cruise ship. Since vessel supplies are not duty-free merchandise, this document removes the reference to "vessel supplies" in proposed § 19.6(d)(1)(ii) and clarifies that in

new § 19.6(d)(1)(iii) the blanket withdrawal procedure may be used for a withdrawal from a Class 9 warehouse, for transportation in bond to another port, of duty-free merchandise intended for “passengers’ on-board purchases” on board the vessel.

In addition, it is noted that duty-free merchandise withdrawn from a Class 9 warehouse must be sold to individuals for exportation from the United States. Accordingly, this final rule further amends § 19.6(d)(1)(ii) in order to clarify that a blanket permit to withdrawal may be used for a withdrawal from a Class 9 warehouse for the passenger vessel purchases referenced above only if the vessel to which the merchandise is transferred is destined for a foreign destination. Finally, other editorial changes have been made to § 19.6(d)(1).

Executive Order 12866

This rule is not considered to be a “significant regulatory action” under Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993). Accordingly, a regulatory assessment is not required.

Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the rule on small entities as required by the Regulatory Flexibility Act (“RFA”, *See* 5 U.S.C. 601 – 612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

According to the International Association of Airport Duty Free Stores (“IAADFS”), there are approximately 25 companies with duty-free operations in the United States and approximately 15 of them would be considered small businesses. As described above, this final rule is expected to result in enhanced efficiency and should lead to uniform operations at customs bonded warehouses.

Thus, while the number of small entities affected would be considered substantial, the economic impacts, while important and beneficial, would not rise to the level of a “significant economic impact.” CBP thus certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this document are contained in §§ 19.6, 19.12, 19.36, and 144.37. This information is required and will be used by CBP to ensure that merchandise that was intended for exportation from duty-free stores was accounted for and was exported

in accordance with law. This final rule is intended to facilitate the operation of duty-free stores in a technological environment by streamlining outdated paper accounting processes and requirements with electronic equivalents while ensuring that adequate records are maintained for audit purposes. The likely respondents are Class 9 warehouse proprietors.

This final rule is intended to facilitate the efficient operation of Class 9 warehouses and the resulting paperwork implications are expected to be minor. As the burden hours associated with the collections of information contained in this final rule are not substantively changed, the Office of Management and Budget (OMB) has already approved the collections of information in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1651-0003 for bonded warehouse proprietor's submissions and 1651-0041 concerning the establishment of bonded warehouses and other bonded warehouse regulations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 19

Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

19 CFR Part 144

Bonds, Customs Duties and inspection, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 19 and 144 of the CBP regulations (19 CFR parts 19 and 144) are amended as follows:

PART 19 — CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 and specific authority citation for §§ 19.35 – 19.39 continue to read, and a new specific authority citation for § 19.6 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

Section 19.6 also issued under 19 U.S.C. 1555, 1557;

* * * * *

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

* * * * *

2. In § 19.6:

a. In paragraph (a)(1), the first sentence is amended by removing the word “Customs” and, in its place, adding the term “CBP”; the second and last sentences are amended by removing the word “shall” each place it appears and adding the word “will” in its place; and the fourth sentence is amended by removing the word “shall” and, in its place, adding the word “must”.

b. Paragraphs (b)(1), (d)(4), and (d)(5) are amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”; and by removing the word “shall” each place it appears and, in its place, adding the word “must”.

c. Paragraph (b)(2) is amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”.

d. Paragraph (c) is amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”; and by removing the word “shall” and, in its place, adding the word “will”.

e. Paragraph (d)(1)(i)(A) is amended by removing the term “Customs territory” and, in its place, adding the term “customs territory”.

f. In paragraph (d)(2), the first and second sentences are amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP” and by removing the word “shall” each place it appears and, in its place, adding the term “must”; the third, fourth, fifth, sixth, and seventh sentences are amended by removing the word “shall” each place it appears and, in its place, adding the term “must”; and the last sentence of the paragraph is amended by removing the word “shall” and, in its place, adding the word “will” and by removing the phrase “without Customs permit” and, in its place, adding the phrase “without a CBP permit”.

g. Paragraph (d)(3) is amended by removing the word “shall” each place it appears and, in its place, adding the word “must”.

h. In paragraph (e), the first sentence is amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”; the second sentence is amended by removing the word “shall” and, in its place, adding the term “will” and by removing the word “Customs” and, in its place, adding the term “CBP”; and the last sentence of the paragraph is amended by removing the word “shall” and, in its place, adding the word “must”.

i. The last sentence of paragraph (b)(2) and paragraph (d)(1)(ii) are revised and a new paragraph (d)(1)(iii) is added, to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

* * * * *

(b) * * *

(2) * * * All other goods which have been withdrawn, but not removed, remain in CBP custody until the end of the warehouse entry bond period (see § 144.5 of this chapter).

* * * * *

(d) * * *

(1) * * *

(ii) Except as provided in paragraph (d)(1)(iii) of this section, blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit must state on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that “Some or all of the merchandise will be withdrawn under blanket permit per § 19.6(d), CBP Regulations.” CBP’s acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation CBP is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(iii) Blanket permits to withdraw may be used for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in § 144.34(c) of this chapter. In addition, blanket permits to withdraw may be used for a withdrawal from a Class 9 warehouse for transportation in bond to another port of duty-free merchandise intended for passengers' on-board purchases when expressly authorized in writing by the appropriate Director, Field Operations, provided that both the Class 9 warehouse and port of destination are under that Director's authority and the vessel is destined for a foreign destination.

* * * * *

3. In § 19.12:

a. Paragraph (a)(1) is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; and the word "shall" is removed and the word "must" is added in its place.

b. Paragraphs (a)(3), (d)(2)(ii), (d)(4)(iii), (f)(2), (h)(1), and (h)(3) are amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

c. Paragraphs (b)(1) and (b)(2) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

d. Paragraphs (c)(1), (c)(3), (d)(1), (d)(2), and (e) are amended by removing the term "Customs entry" each place it appears and, in its place, adding the term "customs entry".

e. Paragraphs (f)(5), (f)(6), (f)(7), (f)(8), (f)(9), and (i) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

f. Paragraphs (d)(4)(i), (d)(4)(ii), (d)(5), and (f)(1) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must"; and by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

g. In paragraph (g), the word "Customs" is removed each place it appears and, in its place, the term "CBP" is added; in the first sentence, "(CF)" is removed; the term "CF 300" is removed each place it appears and, in its place, the term "CBP Form 300" is added; and the word "shall" is removed and, in its place, the word "must" is added.

h. In paragraph (j), the term "(CF 300)" is removed and, in its place, the term "(CBP Form 300)" is added.

i. Paragraphs (d)(3) and (h)(2) are revised to read as follows:

§ 19.12 Inventory control and recordkeeping system.

* * * * *

(d) * * *

(3) *Theft, shortage, overage or damage.*

(i) *General.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of \$100) must be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed \$100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section.

(ii) *Class 9 warehouses.* With respect to Class 9 warehouses, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of \$100) must be immediately brought to the attention of the port director, and confirmed in writing within 20 calendar days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to

make entry within 20 calendar days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed \$100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a unique identifier (see § 19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see § 19.4(b)(8)(ii) of this part).

* * * * *

(h) * * *

* * * * *

(2) *Information required.* (i) *General.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit),

quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(ii) *Class 9 warehouses*. If the proprietor of a Class 9 warehouse successfully demonstrates, by application to the appropriate port director, that shortages will be reported within 20 calendar days of discovery, the port director may approve the submission of a report that contains the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; date when resulting shortages and overages are reported to CBP; a description of merchandise for each entry or unique identifier; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

(iii) *Multiple facilities*. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the annual reconciliation report must cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation report includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation report must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation report should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

* * * * *

4. In § 19.36:

a. Paragraphs (a) and (f) are amended by removing the term “Customs territory” each place it appears and, in its place, adding the term “customs territory”.

b. In paragraph (b), the first sentence is amended by removing the word “shall” and, in its place, adding the word “must” and by removing the term “Customs territory” and, in its place, adding the term “customs territory”; the third sentence is amended by removing the term “shall” and, in its place, adding the term “will” and by removing the two references to “Customs” and, in its place, adding the term “CBP”; and the fourth sentence is amended by removing the reference to “Customs” and, in its place, adding the term “CBP”.

c. In paragraph (c), the first and fourth sentences are amended by removing the term “shall” each place it appears and adding the term “must” in its place; and the fifth sentence is amended by removing the

term “shall” and, in its place, adding the term “will” and by removing the two references to “Customs” and, in its place, adding the term “CBP”.

d. Paragraph (g) is amended by removing the term “shall” each place it appears and, in its place, adding the term “must”; and by removing the term “Customs” and, in its place, adding the term “CBP”.

e. Paragraph (e) is revised to read as follows:

§ 19.36 Requirements for duty-free store operations.

* * * * *

(e) *Merchandise eligible for warehousing in duty-free stores (Class 9 Warehouses).* (1) *In General.* Conditionally duty-free merchandise and other merchandise (domestic merchandise and merchandise which was previously entered or withdrawn for consumption and brought into a duty-free store (Class 9 warehouse) for display and sale or for delivery to purchasers can be warehoused in a duty-free store (Class 9 warehouse), but the conditionally duty-free merchandise and other merchandise must be physically segregated from one another, unless one of the following exceptions apply.

(2) *Marking exception to physical segregation.* Merchandise may be identified or marked “DUTY-PAID” or “U.S.-ORIGIN”, or similar markings, as applicable, to enable CBP officers to easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

(3) *Electronic inventory exception to physical segregation.* If the proprietor has an electronic inventory system capable of immediately identifying conditionally duty-free merchandise from other merchandise, the proprietor need not physically separate conditionally duty-free merchandise from other merchandise or mark the merchandise.

* * * * *

PART 144 — WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

5. The general authority citation for part 144 and specific authority citation for §144.37 continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

6. Section 144.5 is revised to read as follows:

§ 144.5 Period of warehousing.

Merchandise must not remain in a bonded warehouse beyond 5 years from the date of importation or such longer period of time as the port director may at his discretion permit upon proper request being filed and good cause shown.

7. In § 144.37:

a. Paragraph (a) is amended by removing the word “shall” each place it appears and, in its place, adding the word “must”; and by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”.

b. Paragraphs (b)(1), (f), and (h)(3) are amended by removing the word “shall” each place it appears and, in its place, adding the word “must”.

c. In paragraph (b)(2), the first sentence is amended by removing the word “shall” and, in its place, adding the word “must” and by removing the reference to “Customs” and, in its place, adding the term “CBP”; the second and third sentences are amended by removing the word “shall” each place it appears and, in its place, adding the word “will”; and the last sentence is amended by removing the word “shall” and, in its place, adding the word “must”.

d. Paragraph (d) is amended by removing the word “Customs” each place it appears and, in its place, adding the term “CBP”; and by removing the word “shall” each place it appears and, in its place, adding the word “must”.

e. Paragraphs (h)(2), introductory text, and (h)(2)(vi) are revised to read as follows:

§ 144.37 Withdrawal for exportation.

* * * * *

(h) * * *

(2) *Sales ticket content and handling.* Sales ticket withdrawals must be made only under a blanket permit to withdrawal (see § 19.6(d) of this chapter) and the sales ticket will serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor’s design which will include:

* * * * *

(vi) A statement on the original copy (purchaser’s copy) to the effect that goods purchased in a duty-free store will be subject to duty and/or tax with personal exemption if returned to the United States. At the time of purchase, the original sales ticket must be made out in the name of the purchaser and given to the purchaser. One copy of the sales ticket must be retained by the proprietor. This copy may be maintained electronically. A permit file copy will be attached to the

parcel containing the purchased articles unless the proprietor has established and maintained an effective method to match the parcel containing the purchased articles with the purchaser. Additional copies may be retained by the proprietor.

* * * * *

Dated: December 22, 2009

JAYSON P. AHERN
Acting Commissioner
U.S. Customs and Border Protection

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, December 29, 2009 (74 FR 68681)]



BUREAU OF CUSTOMS AND BORDER PROTECTION

19 CFR PART 149

DOCKET NUMBER USCBP-2007-0077

RIN 1651-AA70

**Importer Security Filing and Additional
Carrier Requirements; Correction**

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Correcting amendments.

SUMMARY: This document contains correcting amendments to the interim final rule entitled “Importer Security Filing and Additional Carrier Requirements” published in the **Federal Register** on November 25, 2008. The interim final rule, which requires the submission of an Importer Security Filing (ISF) for cargo arriving in the United States by vessel and a bond to secure compliance with the ISF requirement, inadvertently omitted the liability amounts for breach of the importer security filing bond and neglected to make provision for using the importer security filing bond to secure a single ISF transaction. This document clarifies the bond terms applicable to the importer security filing bond as set forth in an Appendix to the Customs and Border Protection bond regulations by adding the liability amounts for a breach of the bond and by adding a paragraph to cover a single transaction.

DATES: This amendment is effective on December 24, 2009. The compliance dates for the regulations are set forth in 19 CFR 4.7c(d), 4.7d(f), and 149.2(g).

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344–2513.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule entitled “Importer Security Filing and Additional Carrier Requirements” in the **Federal Register** (73 FR 71730). Pursuant to that interim final rule, an Importer Security Filing (ISF) must be submitted for cargo arriving within the limits of a port in the United States by vessel prior to arrival of the cargo. Generally, with certain exceptions, the ISF must be filed no later than 24 hours before the cargo to which the information relates is laden aboard a vessel at a foreign port. The rule was effective on January 26, 2009. On July 14, 2009, CBP published a correction to the interim final rule in the **Federal Register** (74 FR 33920) that amended the regulations by providing the time frame for transmitting an ISF for shipments intended to be transported in-bond for immediate exportation or for transportation and exportation. The document also corrected two CBP Responses to comments in the preamble text to align them with the regulatory text.

II. Clarification of the ISF Bond Terms

Under the rule, all ISF Importers must possess a bond as security for the ISF requirement. Specifically, 19 CFR 149.5(b) provides that the ISF Importer must possess a basic importation and entry bond containing all the provisions of 19 CFR 113.62, a basic custodial bond containing all the provisions of 19 CFR 113.63, an international carrier bond containing all the provisions of 19 CFR 113.64, a foreign trade zone operator bond containing all the provisions of 19 CFR 113.73, or an importer security filing bond as provided in Appendix D of part 113 of 19 CFR. In light of this bond requirement, CBP amended 19 CFR §§ 113.62, 113.63, 113.64, and 113.73, to provide that the principal agrees to comply with ISF requirements and in the event of a breach of the bond, agrees to pay liquidated damages in the amount of \$5,000 per violation. CBP also amended Part 113 by adding Appendix D, titled “Appendix D to Part 113 — Importer Security Filing Bond”, which lists the terms of the ISF bond. However, the liquidated damages language contained in the Appendix D ISF bond does not expressly provide for the payment of liquidated damages in the amount of \$5,000 per violation. Instead, the Appendix D ISF bond

contains broad language that requires ISF Importers to pay any amount prescribed by law or regulation upon demand by CBP for a violation of 19 CFR part 149. CBP is revising the Appendix D ISF bond language to add the \$5,000 liquidated damages clause contained in the other bond provisions.

This amendment is consistent with the background portion of the Supplementary Information to the interim final rule. In discussing the changes made from the Notice of Proposed Rulemaking, CBP explained that “[t]he liquidated damages amount for violations of the Importer Security Filing requirements are changed from the value of the merchandise, as proposed, to \$5,000 for each violation in proposed §§ 113.62(j), 113.64(e), and 113.73(c) and new §113.63(g) and *Appendix D to part 113* (emphasis added).” 73 FR 71736. The inclusion of the \$5,000 liquidated damages clause in the Appendix D ISF bond will bring the Appendix D ISF bond language into conformity with sections 113.62, 113.63, 113.64, and 113.73 and with CBP’s stated intention in the Supplementary Information section of the interim final rule.

This document also clarifies the applicable time period for an Appendix D ISF bond. The current Appendix D language states that the bond is effective for one year beginning with the effective date and for each succeeding annual period, or until terminated. The text is being revised to make clear that the Appendix D ISF bond may also be used to cover a single transaction. This clarification will facilitate compliance with the ISF requirement by ISF Importers and is consistent the Supplementary Information portion of the interim final rule in which CBP stated that it would accept single transaction bonds on a case by case basis. 73 FR 71760. Despite this statement, the terms of the Appendix D ISF bond did not make provision for using it as security for a single transaction.

III. Inapplicability of Notice and Comment and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), CBP has determined that it would be impracticable, unnecessary, and contrary to the public interest to require notice and public procedure for these amendments as CBP is simply clarifying the terms of the importer security filing bond in Appendix D consistent with both the preamble of the interim final rule and the other regulatory language in other bonds used to secure the ISF. In addition, the amendment to add text to clarify that the importer security filing bond can be used as either a continuous or single transaction bond confers a benefit to ISF Importers and imposes no burden on any interested parties. For these same reasons,

pursuant to 5 U.S.C. 553(d)(1) and (d)(3), there is good cause for these amendments to not have a delayed effective date.

IV. The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Also, this amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

V. Amendments

List of Subjects

19 CFR part 113

Common carrier, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

AMENDMENTS TO THE REGULATIONS

Part 113 of title 19, code of Federal Regulations (19 CFR part 113), is amended as set forth below.

PART 113 — CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Amend part 113 to revise Appendix D to part 113 to read as follows:

Appendix D to Part 113 — Importer Security Filing Bond

This appendix contains the relevant terms and conditions for Importer Security Filing Bonds.

Importer Security Filing Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____, as principal having Customs and Border Protection (CBP) Identification Number _____ and _____, as surety are held and firmly bound unto the United States of America up to the sum of _____ dollars (\$_____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the named principal (including the named principal’s employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149,

including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

If the principal defaults on the conditions of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of \$5,000 for each violation, or such other amount as may be authorized by law or regulation upon demand by CBP.

[Complete this paragraph only for a single transaction bond]

This single transaction bond secures the single transaction identified by Importer Security Filing transaction number _____ issued by CBP on _____, 20_____.

[Complete this paragraph only for a continuous bond]

This continuous bond is effective _____, 20_____, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.

This bond is executed on _____, 20_____.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

(Name) (Address)

(Name) (Address) (Principal Name) (Seal)

(Principal Address)

(Surety Name) (Seal)

Surety No. _____

(Surety Mailing Address)

Surety Agent Name _____

Surety Agent ID Number _____

Dated: December 18, 2009

JAYSON P. AHERN
Acting Commissioner

[Published in the Federal Register, December 24, 2009 (74 FR 68376)]