

in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see §127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisal of the merchandise, as provided in §127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 128—EXPRESS CONSIGNMENTS

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AUTHORITY: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the

United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

SOURCE: T.D. 89-53, 54 FR 19566, May 8, 1989, unless otherwise noted.

§ 128.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures.

Subpart A—General

§ 128.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Express consignment operator or carrier.* An “express consignment operator or carrier” is an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, reliable timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.

(b) *Cargo.* “Cargo” means any and all shipments imported into the Customs territory of the United States by an express consignment operator or carrier whether manifested, accompanied, or unaccompanied.

(c) *Courier shipment.* A “courier shipment” is an accompanied express consignment shipment.

(d) *Hub.* A “hub” is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the port director for entry filing, examination, and release of express consignment shipments.

(e) *Express consignment carrier facility.* An “express consignment carrier facility” is a separate or shared specialized facility approved by the port director solely for the examination and release of express consignment shipments.

(f) *Closely integrated administrative control.* The term “closely integrated administrative control” means operations must be sufficiently integrated at both ends of the service (i.e., pick-up and delivery) so that the express consignment company can exercise a high

degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be indicated by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (e.g., a franchise arrangement).

(g) *Reimbursable*. “Reimbursable” means all normal costs incurred at an express consignment operator’s hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.11 Express consignment carrier application process.

(a) *Facility application*. Requests for approval of an express consignment carrier or hub facility must be in writing to the port director.

(b) *Application contents*. The application for approval of an express consignment carrier or hub facility must include the following:

(1) A full description of the international cargo facilities, including blueprints, floor plans and facility location(s).

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of all carriers or operators that intend to use the facility.

(3) An estimate of volume of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.23 of this part).

(4) An application processing fee, as set forth in § 128.13.

(5) A list of principal company officials or officers.

(6) A projected start-up date, and days and hours of operation.

(7) An agreement that the express consignment entity will:

(i) Ensure that all cargo will be processed in the Customs Automated Commercial System (ACS) and associated modules, including, but not limited to, Automated Broker Interface (ABI), Automated Manifest System (AMS),

Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with U.S. Immigration and Customs Enforcement (ICE).

(iii) Provide, without cost to the Government, adequate office space, equipment, furnishings, supplies and security as per CBP’s specifications.

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue

Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers or operators currently using the facility and notify that office whenever a new carrier or operator begins to use the facility or whenever a carrier or operator ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

(c) *Changes or alterations to facility*. All proposed changes or alterations to an existing approved international cargo processing facility must be submitted in writing to the port director for approval prior to the implementation thereof and must contain the information specified in paragraph (b) of this section. Failure to obtain CBP approval by an express consignment operator or carrier for any modifications to the international cargo processing area may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this part.

[T.D. 89-53, 54 FR 19566, May. 8, 1989, as amended by T.D. 93-66, 58 FR 44130, Aug. 19, 1993; CBP. 07-29, 72 FR 31725, June 8, 2007]

§ 128.12 Application approval/denial and suspension of operating privileges.

(a) *Notice*. (1) The port director shall promptly notify the applicant in writing of the decision to approve or deny the application to establish an express consignment carrier or hub facility or to suspend or revoke operating privileges at an existing facility.

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(2) The notice shall specifically state the grounds for denial or for the proposed suspension or revocation.

(b) *Appeal.* The express consignment entity may file a written notice of appeal seeking review of the denial or proposed suspension or revocation within 30 days after notification.

(c) *Recommendation.* The port director shall consider the allegations and responses in the appeal unless, in the case of a suspension or revocation, the express consignment entity requests a hearing. The appeal along with the port director's recommendation shall be forwarded to the Commissioner of Customs or his designee for a final administrative decision.

(d) *Hearing.* In the case of a proposed suspension or revocation, a hearing may be requested within 30 days after notification. If a hearing is requested, it shall be held before a hearing officer appointed by the Commissioner of Customs or his designee within 30 days following the express consignment entity's request. The entity shall be notified of the time and place of the hearing at least 5 days prior thereto. The express consignment entity may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the express consignment entity. At the conclusion of the hearing, all papers and the stenographic record of the hearing shall promptly be transmitted to the Commissioner of Customs or his designee together with a recommendation for final action. The express consignment entity may submit in writing additional views or arguments to the Commissioner or his designee following a hearing on the basis of the stenographic record, within 10 days after delivery to it of a copy of such record. The Commissioner or his designee shall thereafter render the decision in writing, stating the reasons therefor. Such decision shall be served on the express consignment entity, and shall be considered the final administrative action.

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§ 128.13 Application processing fee.

Each operator of an express consignment hub or carrier facility will be charged a fee to establish, alter, or relocate such facility which shall be determined under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the FEDERAL REGISTER and "Customs Bulletin".

Subpart C—Procedures

§ 128.21 Manifest requirements.

(a) *Additional information.* Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all cargo, including all articles for which an entry is not required as noted in §128.23 (which shall be listed separately and their entry status noted), in addition to the information and documents otherwise required by this chapter:

- (1) Country of origin of the merchandise.
- (2) Shipper name, address and country.
- (3) Ultimate consignee name and address.
- (4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) sub-heading number:
 - (i) If the merchandise is required to be formally entered as provided in §128.25; or
 - (ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in §128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding \$200, as provided in §128.24(e).
- (5) Quantity.
- (6) Shipping weight.
- (7) Value.

(b) *Sorting of cargo.* If the shipments are physically sorted by country of origin of the merchandise when they arrive at the hub or express consignment facility and are presented to Customs in this manner, the advance manifest information shall also be provided with

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the merchandise segregated by country of origin.

[T.D. 89-53, 54 FR 19566, May 8, 1989, as amended by T.D. 94-51, 59 FR 30294, June 13, 1994]

§ 128.22 Bonds.

Each express consignment operator or carrier must be recognized by Customs as an international carrier and approved as a carrier of bonded merchandise, and shall file bonds on Customs Form 301, containing the bond conditions set forth in §§ 113.62, 113.63, 113.64 and 113.66 of this chapter, to insure compliance with Customs requirements relating to the importation and entry of merchandise as well as the carriage and custody of merchandise under Customs control.

§ 128.23 Entry requirements.

(a) *General rule.* Except as provided in paragraph (c) of this section, all articles carried by an express consignment entity shall be entered by a person with the right to file entry.

(b) *Procedures*—(1) *General.* All express consignment entities utilizing the procedures in this part shall comply with the requirements of the Customs Automated Commercial System (ACS). These requirements include those under the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACS.

(2) *Entry number.* All entry numbers must be furnished to Customs in a Customs approved bar coded readable format in order to assist in the processing of express consignment cargo under the Customs Automated Commercial System (ACS).

(3) *Paper entry document waiver.* The port director is authorized, at the time of entry, to accept the appropriate electronic equivalent in lieu of entry documents for those entries designated as not requiring examination or review when the advance manifest requirements of § 128.21(a) of this part have been met.

(c) *Exception.* Articles specifically exempt from entry by § 141.4(b) of this chapter need not satisfy the general

rule as set forth in paragraph (a) of this section.

[T.D. 94-51, 59 FR 30294, June 13, 1994]

§ 128.24 Informal entry procedures.

(a) *Eligibility.* Informal entry procedures may generally be used for shipments not exceeding \$2,000 in value which are imported by express consignment operators and carriers. Individual shipments valued at \$2,000 or less may be consolidated on one entry. Such procedures, however, may not be used for prohibited or restricted merchandise, merchandise which is subject to a quota or other quantitative restraints, or for any articles precluded from informal entry procedures by virtue of section 498, Tariff Act of 1930, as amended, (19 U.S.C. 1498).

(b) *Procedures.* Customs Form 3461, appropriately modified to cover all importations under the special procedures contained in this part, shall be submitted prior to the commencement of hub or express consignment carrier facility operations. The party who may make entry under § 143.26 of this chapter may submit a copy of the invoice or the advance manifest as described in § 128.21 in lieu of other control documents.

(c) *Alternative procedure.* The party who may make entry under § 143.26 of this chapter may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. Commercial invoices or advance manifests shall be attached to the Customs Form 3461 which will contain the entry number and such other information deemed necessary by the port director. A notation shall be placed on the Customs Form 3461 that the entry covers multiple shipments.

(d) *Entry summary.* An entry summary (Customs Form 7501) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section. However, see paragraph (e) of this section if the shipment is valued at \$200 or less.

(e) *Shipments valued at \$200 or less.* Shipments valued at \$200 or less meeting the requirements of § 10.151 of this chapter shall be passed free of duty and

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tax. Such shipments must be segregated on the manifest from shipments valued at more than \$200 if an advance manifest is used as the entry document, as provided for in §128.21. If such an advance manifest is used as the entry document, the following are not required to be provided for shipments qualifying under this paragraph:

(1) The Harmonized Tariff Schedule of the United States (HTSUS) sub-heading number (see §128.21(a)(4)); and

(2) An entry summary (see paragraph (d) of this section).

[T.D. 89-53, 54 FR 19566, May 8, 1989, as amended by T.D. 94-51, 59 FR 30294, June 13, 1994; T.D. 95-31, 60 FR 18991, Apr. 14, 1995; T.D. 98-28, 63 FR 16417, Apr. 3, 1998]

§ 128.25 Formal entry procedures.

Formal entry, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except for subpart C), of this chapter, is required for all shipments exceeding the monetary limitation for informal entry (see §128.24) and any shipment for which the informal entry procedures may not be used (see §128.24).

[T.D. 94-51, 59 FR 30295, June 13, 1994]

PART 132—QUOTAS

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132.25 Undeliverable shipment.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Sections 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

SOURCE: T.D. 73-203, 38 FR 20230, July 30, 1973, unless otherwise noted.

§ 132.0 Scope.

This part sets forth rules and procedures applicable to quotas administered by Headquarters, U.S. Customs Service.

Subpart A—General Provisions

§ 132.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Absolute (or quantitative) quotas.* “Absolute (or quantitative) quotas” are those which permit a limited number of units of specified merchandise to be entered or withdrawn for consumption during specified periods. Once the quantity permitted under the quota is filled, no further entries or withdrawals for consumption of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise not by source but by total quantity.

(b) *Tariff-rate quotas.* “Tariff-rate quotas” permit a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced duty rate during a specified period.

(c) [Reserved]