

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.