

Office of Filings and Information Services believes it appropriate, he or she may submit the matter to the Commission.

\* \* \* \* \*

36. Section 200.30-12 is removed and reserved.

37. In § 200.30-13, the word "Comptroller" in the heading and the words "Comptroller of the Commission" in the text are revised to read "Associate Executive Director of the Office of the Comptroller".

38. In § 200.30-14, remove the semicolon at the end of paragraph (a) and "; and" at the end of paragraph (b) and add in both their places a period.

39. Section 200.30-15 is revised to read as follows:

**§ 200.30-15 Delegation of authority to Executive Director.**

Under Pub. L. 100-181, 101 Stat. 1254 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Director to be performed by him or her or under his or her direction by persons designated by the Chairman of the Commission: To identify and implement additional changes within the Commission that will promote the principles and standards of the National Performance Review and the strategic and quality management approaches described by the Federal Quality Institute's "Presidential Award for Quality" or its successor awards.

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

40. The authority citation for part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39, unless otherwise noted;

\* \* \* \* \*

41. In the last sentence of § 270.8b-25(b), the words "(j) and (k)" are revised to read "(h) and (i)".

By the Commission.

Dated: March 14, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-6696 Filed 3-17-95; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 10**

[T.D. 95-22]

RIN 1515-AB65

**Temporary Importation Bonds; Anticipatory Breach, Assessment Amounts, Petitions for Relief**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to permit anticipatory breach and provide for early payment of liquidated damages in Temporary Importation Bond (TIB) cases. It also amends the regulations to permit assessment of liquidated damages in excess of double the duties in those cases where the district director requires extra bonding in order to protect the revenue and to state that the term "duties" for TIB assessment shall also include any applicable merchandise processing fees that otherwise would be charged on an entry for consumption. Finally, the document amends the regulations to eliminate forwarding of petitions for relief in TIB cases to Customs Headquarters when the bond principal or surety is dissatisfied with the decision on the petition afforded by the district director.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202-482-6950.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the provisions of Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), merchandise may be entered under the terms of a Temporary Importation Bond (TIB) without the payment of duties if the merchandise is entered for a specific purpose enumerated in Subchapter XIII, HTSUS. Per U.S. Note 1 to Subchapter XIII, the merchandise is permitted to remain in the United States for a one-year period subsequent to the date of importation (with a maximum of two one-year extensions allowed). Prior to the expiration of the bond period or any properly approved extension thereof, the merchandise must be exported or destroyed under Customs supervision. Failure to export or destroy in a timely manner results in the imposition of liquidated damages against the importer.

Instances arise where, after initiation of a TIB entry, the importer decides that the merchandise will remain in the United States in violation of the terms of the bond. Rather than wait for the one-year period to end and for liquidated damages to be assessed, importers inquired as to the possibility of early payment of liquidated damages. The Customs Regulations currently do not provide for an anticipatory breach of a TIB.

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of September 29, 1992 (57 FR 44714), it was proposed to amend the regulations to permit anticipatory breach of a TIB and allow the importer to pay the full measure of liquidated damages and thereby close the bond. Through payment of the liquidated damages, the importer would waive his right to receipt of notice of a claim for liquidated damages pursuant to § 172.1(a), Customs Regulations (19 CFR 172.1(a)).

For TIB entries, the provisions of § 10.31(f) of the Customs Regulations (19 CFR 10.31(f)) require that a bond shall be given containing the conditions set forth in § 113.62 of the Customs Regulations (19 CFR 113.62) in an amount equal to double the duties which it is estimated would have accrued (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. By contrast, under the provisions of § 10.39(d), if any article entered under Chapter 98, Subchapter XIII, HTSUS, has not been exported or destroyed in accordance with the regulations within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f).

On the one hand, § 10.31(f) empowers the district director to require a bond in excess of double the duties, but the provisions of § 10.39(d) only permit him to assess liquidated damages at double the estimated duties or such lower amount (emphasis added) as prescribed by § 10.31(f). These regulations can provide anomalous results and inefficient protection of the revenue. Accordingly, the NPRM proposed an amendment to the regulations to permit, in the case of breach of a TIB, assessment of liquidated damages in an

amount equal to double the estimated duties or any different amount prescribed by § 10.31(f) rather than only a lower amount.

When a TIB entry is filed, no merchandise processing fees are charged to the importer of record. However, section 111 of the Customs and Trade Act of 1990 (Pub. L. 101-382) amended 19 U.S.C. 58c(g) (the statute which requires payment of the merchandise processing fee) to provide that all administrative and enforcement provisions of the Customs laws and regulations, except those relating to drawback, shall apply with respect to any fee prescribed under 19 U.S.C. 58c(a) (which requires payment of the merchandise processing fee), and with respect to persons liable therefor, as if such fee is a Customs duty. Any penalty which is expressed in terms of a relationship to the amount of the duty (e.g., liquidated damages expressed in terms of an amount equal to double the estimated duties due on an entry) shall be assessed as a multiple of the unpaid fee. Accordingly, when calculating the measure of liquidated damages for breach of a TIB, the amount of estimated duties due for breach should include duties plus the merchandise processing fees that would have been applicable to the entry had an entry for consumption been filed. The NPRM proposed an amendment to the regulations to provide that, for purposes of assessment of liquidated damages for breach of a TIB, the term duties includes any merchandise processing fees that would have been due on a consumption entry that would have been filed with regard to such TIB merchandise.

Under the provisions of § 10.39(e) of the Customs Regulations (19 CFR 10.39(e)), if there has been a default with respect to all the articles covered by the bond and a written petition for relief is filed timely, the regulations state that the petition "shall be transmitted to Headquarters, U.S. Customs Service, with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation, \* \* \*." This language noting referral to Headquarters is unique to TIB cases in which all the articles covered by the bond are in default and the district director allows no mitigation. The NPRM posited that the jurisdictional amount found in § 172.21 of the Customs Regulations (19 CFR 172.21) should govern review of all petitions. Jurisdiction should not be predicated on a denial of relief in a limited fact situation. Accordingly, the NPRM proposed that § 10.39(e) be amended to

remove the reference regarding referral of the petition to Customs Headquarters.

#### Analysis of Comments

Five comments were received with regard to the subject document. It should initially be noted that Customs, in error, indicated the harbor maintenance fees, as required by the provisions of the Harbor Maintenance Review Act of 1986 (Pub. L. 99-682), are not imposed on TIB entries. The NPRM then went on to state also in error that unpaid harbor maintenance fees, as well as merchandise processing fees, should be included in any calculation of double the duties or 110 percent of the duties for assessment of liquidated damages. Two commenters noted these errors. Customs concedes these mistakes, and the final rule avoids any mention of harbor maintenance fees in the calculation of duties, fees and charges in TIB liquidated damages assessment.

Two commenters suggested that the proposed regulatory amendment would only permit anticipatory breach as to the entire amount of merchandise entered under a TIB and would not permit anticipatory breach if a percentage of TIB merchandise covered by a single entry was intended to remain in the United States in violation of the bond provisions but the remaining percentage was to be exported or destroyed in compliance with bond conditions. The regulations require assessment of the full amount of liquidated damages applicable to the entry. The commenters suggest that there would be little incentive to comply with anticipatory breach provisions because the importer who wishes to file a partial anticipatory breach would be required to pay for the full amount of the entry.

Customs concedes that the comment has some validity but it should be emphasized that acceptance of payment in recognition of anticipatory breach of TIB conditions is being promulgated in response to requests made to Customs and as a courtesy to the importing community. It will permit importers to close out the records on a TIB rather than wait for the one-year bond period to expire. Partial anticipatory breaches would be difficult for Customs to administer, particularly if merchandise which the importer still intends to export or destroy in compliance with bond conditions has not yet been exported or destroyed so as to close the bond out in its entirety. Customs will not accept a partial anticipatory breach if the merchandise not covered by the breach has not been exported or destroyed in compliance with bond terms because of the difficulty of administration.

A comment received from a representative of surety companies did not oppose the concept of anticipatory breach, but did request that Customs notify a surety that anticipatory breach occurred, liquidated damages were paid and that the bond could be closed with regard to that particular TIB entry. Customs has no objection to this request and has added language which would require surety notification by the importer when an anticipatory breach occurs. Inasmuch as the importer seeks the benefit of anticipatory breach, Customs does not find it burdensome to require the importer to notify surety of its actions.

One commenter was of the view that the proposed amendment to § 10.31(f) gave Customs excessively broad discretion in deciding the bond amount. We disagree. The provisions of § 10.31(f) give the district director discretion to require a bond in sufficient size to protect the revenue. As a condition precedent to requiring a larger bond, the district director must notify the entrant, in writing or by equivalent electronic notification, of the increase. The language of the regulation does not permit an increase in the bond amount without cause.

Finally, one commenter indicates that under proposed amendments to § 10.39(e) of the regulations, Customs could be faced with an anomalous situation regarding review of petitions for relief. As proposed, the district director would review petitions for relief in all cases where the claim is for \$100,000 or less and the entire amount of merchandise entered under a TIB is in default. Under the provisions of § 10.39(f), a petition for relief could be reviewed by the district director when a partial default occurs and the liability for liquidated damages on the articles in respect of which there has been a default does not exceed \$50,000. Thus, jurisdictional amounts are not consistent, and Headquarters review would be required in certain TIB liquidated damages cases, depending upon what percentage of articles are in default. We agree with the comment and, therefore, are amending § 10.39(f) to be consistent with the change to § 10.39(e).

Accordingly, the regulations are amended as proposed except that references to the harbor maintenance fee have been removed, notice of anticipatory breach will now be required to be afforded to sureties by the breaching importer, and the jurisdictional amount in § 10.39(f) is amended to \$100,000 to be consistent with § 10.39(e).

**Regulatory Flexibility Act and Executive Order 12866**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**List of Subjects in 19 CFR Part 10**

Articles conditionally free, Customs duties and inspection, Exports, temporary importations under bond.

**Amendments**

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for part 10 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1481, 1484, 1498, 1508, 1623, 1624;

\* \* \* \* \*

2. Section 10.31 is amended by revising the first two sentences of paragraph (f) to read as follows:

**§ 10.31 Entry; bond.**

\* \* \* \* \*

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the district director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. \* \* \*

\* \* \* \* \*

3. Section 10.39(d)(1) is amended by removing the word "lower" in the first sentence and by adding in its place the word "different", and by adding a sentence at the end of the paragraph to read as follows:

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(d) (1) \* \* \* For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

\* \* \* \* \*

4. Section 10.39(e) is amended by revising its first sentence to read as follows:

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(e) If there has been a default with respect to all the articles covered by the bond and a written petition for relief has been timely filed as provided in part 172 of this chapter, it shall be reviewed by the district director if the full amount of the claim does not exceed \$100,000 and by the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, if the full amount of the claim exceeds \$100,000.

\* \* \* \* \*

**§ 10.39 [Amended]**

\* \* \* \* \*

5. Section 10.39(f) is amended by removing the figure "\$50,000" in the first sentence and by adding in its place the figure "\$100,000".

6. Section 10.39 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

\* \* \* \* \*

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(g) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

\* \* \* \* \*

Approved: February 23, 1995.

**Peter J. Baish,**  
*Acting Commissioner of Customs.*

**Dennis M. O'Connell,**  
*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95-6759 Filed 3-17-95; 8:45 am]

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts 200 and 760**

[Docket No. R-95-1750; FR-3468-F-02]

RIN 2501-AB83

**Participant's Consent To Release of Information**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992, and Section 3003 of the Omnibus Budget Reconciliation Act of 1993. Section 904 of the McKinney Act authorizes HUD to require applicants or participants in any HUD program involving review of an applicant's or participant's income to sign a consent form authorizing HUD, the Housing Agency/Authority, or the owner to verify income information by requesting wage and claim data from employers and the State agency responsible for the administration of the State unemployment laws.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Edward Whipple, Director, Occupancy Division, Office of Assisted Housing, Room 4206, concerning occupancy matters; Barbara D. Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180 concerning housing assistance programs administered by this office; and David L. Decker, Director, Computer Matching Activities, Room 5156, concerning computer matching/tenant income verification matters. They may be contacted at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0744, (202) 708-3944 and (202) 708-0099, respectively. Hearing or speech-impaired individuals may call