

COMMENTS FILED—Continued

Commenter	Abbreviation
The Peoples Gas Light and Coke Company, North Shore Gas Company, and Northern Illinois Gas Company.	Peoples/North Shore/Northern Illinois.
TransCapacity Limited Partnership	TransCapacity.
United Distribution Companies	UDC.
Viking Gas Transmission Company	Viking.
Williams Interstate Natural Gas System	WINGS.
Williston Basin Interstate Pipeline Company	Williston Basin.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 118

[T.D. 96-57]

RIN 1515-AB83

Centralized Examination Stations; Immediate Suspension or Permanent Revocation as Operator Upon Indictment for any Felony

AGENCY: Customs Service, Treasury.
ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to enable Customs port directors to suspend immediately operations at a Centralized Examination Station (CES) whenever the operator, entity, or other person exercising substantial ownership or control over the operator is indicted for, convicted of, or has committed acts which would constitute any felony. This document also makes it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. This action is taken in order to protect the public interest and to promote public confidence concerning the integrity of the CES program.

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Linda Walfish, Office of Field Operations, Trade Compliance (202) 927-1167.

SUPPLEMENTARY INFORMATION:

Background

In T.D. 93-6 (58 FR 5596) Customs amended the Customs Regulations (19 CFR Chapter 1) to create a new Part 118 that set forth the regulatory framework for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-

operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Regarding the termination of CESs, Customs stated in T.D. 93-6 that while immediate revocation and cancellation for a criminal act should not be limited to cases involving an actual conviction or admission, the only criminal offenses which should result in an immediate revocation and cancellation would be those which involved theft, smuggling, or a theft-connected crime.

On further consideration of this issue, Customs published a document in the Federal Register (61 FR 1877) on January 24, 1996, proposing to amend the Customs Regulations to enable Customs port directors to immediately suspend operations at a CES whenever the operator, entity, or other person exercising substantial ownership or control over the operator is indicted for, convicted of, or has committed acts which would constitute any felony. The notice of proposed rulemaking also sought to make it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. The regulatory amendments proposed were promulgated in order to protect the public interest and to promote public confidence concerning the integrity of the CES program. The notice proposed to amend § 118.21, which provides for the revocation of selection and cancellation of the written agreement to operate a CES. Additional, conforming changes were also proposed to §§ 118.0, 118.22, and 118.23. The document solicited comments concerning these changes.

The comment period closed on March 25, 1996. Only one comment was received and it was from a Customs field office. Because the comment is beyond the scope of the proposal, it will not be discussed in this document and will be addressed through another forum. After further consideration of the

proposal, Customs has decided to adopt the proposed regulatory amendments as a final rule without substantive change.

Regulatory Flexibility Act

Pursuant to 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, as the current number of centralized examination station operators is small, *i.e.*, less than 200, and the regulation only will affect those who commit felonies or fail to follow the terms of their agreement. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Imports, Licensing, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons stated above, part 118, Customs Regulations (19 CFR part 118), is amended as set forth below:

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

2. In § 118.0, the second sentence is revised to read as follows:

§ 118.0 Scope.

* * * It covers the application process, the responsibilities of the

person or entity selected to be a CES operator, the written agreement to operate a CES facility, the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES or to propose the permanent revocation of a CES operator's or entity's selection and cancellation of the written agreement for specified conduct, and the appeal procedures to challenge an immediate suspension or proposed revocation and cancellation action.

* * *

3. In § 118.21:

(a) The heading is revised and introductory text is added;

(b) Paragraph (a) is revised;

(c) Paragraph (b)(1) is amended by adding the words "to comply with any of" before the words "the provisions of";

(d) A new paragraph (b)(6) is added; and

(e) A new paragraph (c) is added.

The revisions and additions read as follows:

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension.* The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to § 118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must have probable cause to believe the proscribed acts occurred.

(b) * * *

(6) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under

paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this paragraph, the suspension of CES activities remains in effect through the appeal procedures provided under § 118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to indictment or conviction or after committing any acts which would constitute the culpable behavior described under paragraph (a) of this section, will not preclude application of this section, but may be taken into account by the port director in exercising discretion to take adverse action. If the person whose employment status changed remains in a substantial ownership, control, or beneficial relationship with the CES operator, this factor will also be considered in exercising discretion under this section.

4. Section 118.22 is revised to read as follows:

§ 118.22 Notice of immediate suspension or proposed revocation and cancellation action.

Adverse action pursuant to the provisions of § 118.21(a) or (b) is initiated when the port director serves written notice on the operator or entity selected to operate the CES. The notice shall be in the form of a statement specifically setting forth the grounds for the adverse action and shall inform the operator of the appeal procedures under § 118.23 of this part.

5. Section 118.23 is revised to read as follows:

§ 118.23 Appeal to the Assistant Commissioner; procedure; status of CES operations.

(a) *Appeal to the Assistant Commissioner.* Appeal of a port director's decision under § 118.21(a) or (b) must be filed with the Assistant Commissioner, Office of Field Operations, within 10 calendar days of receipt of the written notice of the adverse action. The appeal shall be filed in duplicate and shall set forth the CES operator's or entity's responses to the grounds specified by the port director in his written notice letter for the adverse action initiated. The Assistant Commissioner, Office of Field Operations, or his designee, shall render a written decision to the CES operator or entity, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal, unless the period for decision is

extended with due notification to the CES operator or entity.

(b) *Status of CES operations during appeal.* During this appeal period, an immediate suspension of a CES operator's or entity's selection and written agreement pursuant to § 118.21(a) of this part shall remain in effect. A proposed revocation of a CES operator's or entity's selection and cancellation of the written agreement pursuant to § 118.21(b)(1) through (5) of this part shall not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the operator.

(c) *Effect of suspension or revocation.* Once a suspension or revocation action takes effect, the CES operator must cease CES operations. However, when CES operations are suspended or revoked and cancelled by Customs, it is the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

George J. Weise,

Commissioner of Customs.

Approved: June 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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Internal Revenue Service

26 CFR Part 1

[TD 8669]

RIN 1545-AR18

Computation of Combined Taxable Income Under the Profit Split Method When the Possession Product Is a Component Product or an End-Product Form for Purposes of the Possessions Credit Under Section 936; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8669] which were published in the Federal Register on Friday, May 10, 1996 (61 FR 21366). The final regulations relate to the computation of combined taxable income under the profit split method.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman (202) 622-3870 (not a toll-free number).