

value to justify its sale, the merchandise shall be destroyed, unless it can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(h) *Unclaimed merchandise remaining on dock.* Unclaimed merchandise remaining on the dock which, in the opinion of the port director, will not sell for enough to pay the cost of cartage and storage shall be sold at public auction upon public notice of not less than 6 or more than 10 days.

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in section 3, Toxic Substances Control Act ("TSCA") and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of §§12.125 through 12.127 of this chapter.

(Secs. 491, 492, 46 Stat. 726, as amended, 727, as amended, sec. 201, 72 Stat. 1412, 68A Stat. 716, as amended, 86 Stat. 995; (19 U.S.C. 1491, 1492, 26 U.S.C. 5688, 5753); sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 83-158, 48 FR 34740, Aug. 1, 1983; T.D. 98-74, 63 FR 51290, Sept. 25, 1998]

#### § 127.29 Unsold merchandise.

Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the port director is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559))

### Subpart D—Proceeds of Sale

#### § 127.31 Disposition of proceeds.

From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(a) Internal revenue taxes.

(b) Expenses of advertising and sale.

(c) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see §127.32 of this subpart.)

(d) Duties.

(e) Any other charges due the United States in connection with the merchandise.

(f) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1493, 1559, 1753))

#### § 127.32 Expenses of cartage, storage, and labor.

The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(a) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (pro-rated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(b) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (pro-rated when proceeds are insufficient to pay them fully).

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

#### § 127.33 Chargeable duties.

The duties chargeable on any merchandise within the purview of this subpart shall be assessed on the appraised dutiable value at the rate of

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duty chargeable at the time the merchandise became subject to sale. Household and personal effects of the character provided for in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), which belong to persons who have not arrived in this country before the effects become subject to sale, are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive and make entry for the effects before they are sold.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 89-1, 53 FR 51255, Dec. 21, 1988; T.D. 97-82, 62 FR 51770, Oct. 3, 1997]

**§ 127.34 Auctioneer's commissions.**

The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be based on the amount of the successful bid.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

**§ 127.35 Presentation of accounts.**

Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the port director for payment within 10 days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for different lots sold.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

**§ 127.36 Claim for surplus proceeds of sale.**

(a) *Filing of claim.* Claims for the surplus proceeds of the sale of unclaimed or abandoned merchandise shall be filed with the port director at whose direction the merchandise was sold. The following shall be used in filing a claim:

(1) *Unclaimed merchandise.* Claims for surplus proceeds of the sale of un-

claimed merchandise which has become abandoned and sold under section 491 of the Tariff Act of 1930, as amended (19 U.S.C. 1491), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(2) *Involuntarily abandoned merchandise—(i) Warehouse goods deemed abandoned.* Claims for surplus proceeds of sale of warehouse goods deemed involuntarily abandoned sold under section 559 of the Tariff Act of 1930, as amended (19 U.S.C. 1559), shall be established by reference to the warehouse entry, or, if the right to withdraw the merchandise from warehouse has been transferred, by reference to the documents by which the transfer was made.

(ii) *Trade fair articles deemed abandoned.* Claims for surplus proceeds of sale of trade fair articles deemed involuntarily (mandatorily) abandoned under section 4 of the Trade Fair Act of 1959 (19 U.S.C. 1753(c)), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic copy or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading. (See §147.47 of this chapter.)

(b) *Payment of claim.* If a claim of the owner or consignee of unclaimed or abandoned merchandise for the surplus proceeds of sale is properly established as provided in this section, such proceeds of sale shall be paid to him pursuant to section 493 of the Tariff Act of 1930, as amended (19 U.S.C. 1493).

(c) *Doubtful claims.* Any doubtful claims for the proceeds of sale along with all pertinent documents and information available to the port director shall be forwarded to the Commissioner of Customs for instructions or for referral to the General Accounting Office for direct settlement.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18 (19 U.S.C. 1491, 1493, 1559, 1753))

**§ 127.37 Insufficient proceeds.**

(a) *Warehouse merchandise deemed involuntarily abandoned.* If the proceeds of sale of warehouse merchandise deemed involuntarily abandoned are