

Subpart D—Destroyed, Abandoned, or Exported Merchandise**§ 158.41 Destruction of prohibited merchandise.**

Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the United States by any Government agency after its release from Customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal for consumption, may be destroyed under Government supervision. In such case, the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded. In lieu of destruction, the merchandise may be exported under Customs supervision in accordance with § 158.45(c).

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

§ 158.42 Abandonment by importer within 30 days after entry.

Allowance in duties for merchandise abandoned to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), shall be subject to the following conditions:

(a) *Minimum quantity to be abandoned.* The merchandise being abandoned shall represent 5 percent or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the merchandise being abandoned appears.

(b) *Application within 30 days.* The importer shall file written notice of abandonment with the director of the port where the entry was filed within 30 days after the date of entry, or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(c) *Delivery of merchandise.* Within the 30-day period set forth in paragraph (b) of this section, the importer shall deliver the abandoned merchandise to such place as the port director specifies, unless the port director is satisfied that the merchandise is so far destroyed as to be nondeliverable.

(d) *Identification of merchandise.* The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the port director, who shall make such examination as may be necessary to verify such identification.

(e) *Segregation and repacking.* When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the importer and under Customs supervision.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.43 Abandonment or destruction of merchandise in bond.

Allowance in duties for merchandise entered under bond destroyed under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or for merchandise in bonded warehouse abandoned to the Government under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), shall be subject to the following conditions:

(a) *Application by importer.* The importer shall file an application for abandonment or destruction of merchandise in bond with the port director on Customs Form 3499, with the title modified to read "Application and Permit to Abandon (or Destroy) Goods in Bond." When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the port director.

(b) *Concurrence of warehouse proprietor.* An application to abandon or destroy warehoused merchandise shall not be approved unless concurred in by the warehouse proprietor.

(c) *Abandonment—(1) Costs.* When in the opinion of the port director the abandonment of merchandise under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), will involve any expense or cost to the Government, or if the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, such abandonment shall not be permitted unless the importer deposits a sum which in the opinion of the port director will be sufficient to save the

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Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the importer. However, the applicant may elect to destroy such merchandise under Customs supervision pursuant to the provisions of section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)).

(2) *Time period.* The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation.

(d) *Destruction—(1) Costs.* Destruction of merchandise under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), shall be at the expense of the importer.

(2) *Time period.* The importer may request destruction of his warehoused merchandise within 5 years from the date of importation.

(e) *Action by port director.* When the conditions set forth in paragraphs (a) through (d) of this section are met, the port director may grant applications and make an allowance in duties for the merchandise abandoned or destroyed. In any case where doubt exists, the matter shall be referred to the Commissioner of Customs.

(Secs. 557, 563, 46 Stat. 744, as amended, 746, as amended; 19 U.S.C. 1557, 1563)

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.44 Disposition of abandoned merchandise.

(a) *General conditions.* The disposition of merchandise abandoned to the Government pursuant to §158.42 or §158.43, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the United States Customs Service.

(b) *Sale of merchandise.* If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of part 127 of this chapter, unless it is worthless or it appears

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probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(c) *Disposition of worthless merchandise.* If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the port director shall specify. The port director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application.

(Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 77-12, 41 FR 56629, Dec. 29, 1976]

§ 158.45 Exportation of merchandise.

(a) *From continuous Customs custody.* Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§18.25 through 18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody.* Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under Customs supervision in accordance with §§18.25 through 18.27 of this chapter, with refund of any duties that have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with §158.41.