

hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations or designee together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Assistant Commissioner, Office of Field Operations or designee following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Assistant Commissioner, Office of Field Operations or designee shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Assistant Commissioner, Office of Field Operations or designee may appeal the decision in the Court of International Trade.

[T.D. 82–204, 47 FR 49369, Nov. 1, 1982, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 88–63, 53 FR 40219, Oct. 14, 1988; T.D. 92–81, 57 FR 37697, Aug. 20, 1992; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 19.4 Customs and proprietor responsibility and supervision over warehouses.

(a) *Customs supervision.* The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accord-

ance with §101.2(c) of this chapter. Independent of any need to appraise or classify merchandise, the port director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, storage, security, or safety in a warehouse facility.

(b) *Proprietor responsibility and supervision—(1) Supervision.* The proprietor shall supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security, conditions of storage, and safety in the warehouse as required by law and regulations. Supervision by the proprietor shall be that which a prudent manager of a storage and manipulation facility would be expected to exercise.

(2) *Customs access.* The warehouse proprietor shall permit access to the warehouse and present merchandise within a reasonable time after request by any Customs officer.

(3) *Safekeeping of merchandise and records.* The proprietor is responsible for safekeeping of merchandise and records concerning merchandise entered in Customs bonded warehouses. The proprietor or his employees shall safeguard and shall not disclose proprietary information contained in or on related documents to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the document relates or their authorized agent.

(4) *Records maintenance—(i) Maintenance.* The proprietor shall:

(A) Maintain the inventory control and recordkeeping system in accordance with the provisions of §19.12 of this part;

(B) Retain all records required in this part and defined in §163.1(a) of this chapter, pertaining to bonded merchandise for 5 years after the date of the final withdrawal under the entry; and

(C) Protect proprietary information in its custody from unauthorized disclosure.

(ii) *Availability.* Records shall be readily available for Customs review at the warehouse. In addition, a proprietor may keep records at another location for Customs review, but only if the proprietor first receives written approval for such storage from the port director.

(5) *Record retention in lieu of originals.* A warehouse proprietor may, in accordance with §163.5 of this chapter, utilize alternative storage methods in lieu of maintaining records in their original formats.

(6) *Warehouse and merchandise security.* The warehouse proprietor shall maintain the warehouse facility in a safe and sanitary condition and establish procedures adequate to ensure the security of all merchandise under Customs custody stored in the facility. The warehouse construction will be a factor that will be considered by the port director in deciding whether to approve the application. The facility shall be built in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. If a portion of the facility is to be used for the storage of non-bonded merchandise, the port director shall designate the means for effective separation of the bonded and non-bonded merchandise, such as a wall, fence, or painted line. All inlets and outlets to bonded tanks shall be secured with locks and/or in-bond seals.

(7) *Storage conditions.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. Doors and entrances shall be left unblocked for access by Customs officers and warehouse proprietor personnel.

(8) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weigher's or gauger's numbers. Packages with exceptions due to damage or loss of contents, or not iden-

tical as to quantity or quality of contents shall be stored separately until the discrepancy is resolved with Customs. Merchandise received in the warehouse shall be stored in a manner directly identifying the merchandise with the entry, general order, or seizure number; using a unique identifier for inventory categories composed of fungible merchandise accounted for on a First-In-First-Out (FIFO) basis; or using a unique identifier for inventory categories composed of fungible merchandise accounted for using another approved alternative inventory method.

(i) *Direct identification.* The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. Containers covered by a given warehouse entry, general order or seizure shall not be mixed with goods covered by any other entry, general order or seizure. Merchandise covered by a given warehouse entry, general order or seizure may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for each entry, general order or seizure is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(ii) *FIFO.* A proprietor may account for fungible merchandise on a First-In-First-Out (FIFO) basis instead of specific identification by warehouse entry number, provided the merchandise meets the criteria for fungibility and the recordkeeping requirements contained in §19.12 of this part are met. As of the beginning date of FIFO procedures, each kind of fungible merchandise in the warehouse under FIFO shall constitute a separate inventory category. Each inventory category shall be assigned a unique number or other

identifier by the proprietor to distinguish it from all other inventory categories under FIFO. All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise under other inventory categories or merchandise accounted for under other inventory methods. The unique identifier shall be marked on the merchandise, its container, or the location where it is stored so as to clearly show the inventory category of each article under FIFO procedures. Merchandise covered by a given unique identifier may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for a specific unique identifier is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, seizure, or unique identifier so a physical count can be made to verify the accuracy of the record balance.

(iii) *Other alternative inventory methods.* Other alternative inventory systems may be used, if Customs approval is obtained. Importers or proprietors who wish to use an alternative inventory method other than FIFO must apply to Customs Headquarters, Office of Regulations and Rulings, for approval.

(9) *Miscellaneous responsibilities.* The proprietor is responsible for complying with requirements for transport to his warehouse, deposit, manipulation, manufacture, destruction, shortage or overage, inventory control and record-keeping systems, and other requirements as specified in this part.

[T.D. 97-19, 62 FR 15834, Apr. 3, 1997, as amended by T.D. 98-22, 63 FR 11825, Mar. 11, 1998; T.D. 98-56, 63 FR 32944, June 16, 1998]

§ 19.5 [Reserved]

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

(a)(1) *Deposit in warehouse.* The port director may authorize the deposit of merchandise in designated bonded warehouses, without physical super-

vision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in part 144, subpart B, of this chapter, shall be examined or inspected at the place of unloading, bonded warehouse, or other location as ordered by the port director. When merchandise is deposited in a proprietor's warehouse or is accepted and receipted for by a proprietor or his agent for transport to the proprietor's warehouse, the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under part 158, subparts A and B, of this chapter by the port director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in §125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within five business days of agreement and provided to the port director on the appropriate cartage documents as set forth in §125.31 of this chapter. If the proprietor of the bonded warehouse transports the goods to the warehouse, no discrepancy report shall be necessary.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the port director for concealed shortages (i.e., §158.5(a)), casualty loss (i.e., part 158, subpart C), destruction (i.e., §158.43), or manipulation (i.e., §19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The port director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in §144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only