

filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(f) Whenever the circumstances warrant, and occasionally in any event, port directors shall cause the fact of exportation to be verified by the Office of Enforcement in harmony with the procedures provided for in §§18.7 and 191.61 of this chapter.

(g) Upon the presentation of satisfactory evidence to the director of the port at which samples were entered under subheading 9813.00.20, HTSUS, or professional equipment or tools of trade were entered under subheading 9813.00.50, HTSUS, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation shall be suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9799, June 25, 1969; T.D. 83-212, 48 FR 46771, Oct. 14, 1983; T.D. 84-213, 49 FR 41165, Oct. 19, 1984; T.D. 89-1, 53 FR 51249, Dec. 21, 1988; T.D. 91-77, 56 FR 46114, Sept. 10, 1991; T.D. 98-16, 63 FR 11004, Mar. 5, 1998]

§ 10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS), may be canceled in the manner prescribed in §113.55 of this chapter. A completed re-exportation counterfoil on a carnet establishes that the articles covered by

the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of §114.26 of this chapter. In the case of articles entered under subheading 9813.00.30, HTSUS, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the port director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the port director is satisfied that the articles were so destroyed as articles of commerce 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). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and §158.43 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the United States under bond. In addition, the port director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the United States Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d)(1) If any article entered under Chapter 98, subchapter XIII, HTSUS, except those entered under a carnet, has not been exported or destroyed in

accordance with the regulations in this part 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 Fines, Penalties, and Forfeitures Officer 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 different amount is prescribed by §10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer within 60 days after the date of the demand. For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the port director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof of the exportation or destruction of the articles under conditions set forth in the Convention or Agreement under which the carnet is issued. If such proof is not furnished within the 6-month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) Demand for return to Customs custody. When the demand for return to Customs custody is made in the case of merchandise entered under Chapter 98, subchapter XIII, HTSUS (19 U.S.C.

1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

(1) If evidence is furnished which satisfies the Fines, Penalties, and Forfeitures Officer that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the United States under bond, upon the payment of such lesser amount as the port director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the Fines, Penalties, and Forfeitures Officer is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the United States under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the port director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by the Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation took place after the exportation which it is intended to establish.

(4) Upon the payment of an amount equal to double the duty which would have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in §10.31(f), if such amount is determined to be less than the full amount of the bond.

(f) *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.

(g) If the petitioner is not satisfied with the port director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the designated Headquarters official with a full report on the case.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9799, June 25, 1969; T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 71-70, 36 FR 4485, Mar. 6, 1971; T.D. 73-308, 38 FR 30549, Nov. 6, 1973; T.D. 74-227, 39 FR 32015, Sept. 4, 1974; T.D. 75-36, 40 FR 5146, Feb. 4, 1975; T.D. 84-213, 49 FR 41165, Oct. 19, 1984; T.D. 89-1, 53 FR 51249, Dec. 21, 1988; T.D. 91-71, 56 FR 40779, Aug. 16, 1991; T.D. 95-22, 60 FR 14632, Mar. 20, 1995; T.D. 98-10, 63 FR 4167, Jan. 28, 1998; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; T.D. 00-57, 65 FR 53574, Sept. 5, 2000]

§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with §10.38.

(b) If any article entered under Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, is not exported or destroyed within the period of time during which articles may remain in the Customs territory of the United States under bond (including any lawful extension), the port director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the port director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs