

Bonded Warehouse Manual for Customs and Border Protection Officers and Bonded Warehouse Proprietors

Cargo and Conveyance Security
Office of Field Operations

HB 3500-11
January 2012



U.S. Customs and
Border Protection

FOREWORD

Bonded warehouses exist to fulfill an important role in international trade including the storage of imported cargo pending importation into and/or exportation from the United States.

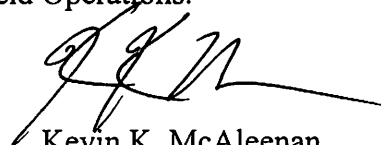
The Bonded Warehouse Manual (BWM) has been developed by U.S. Customs and Border Protection (CBP) as a comprehensive guide for understanding bonded warehouse operations in the United States. The BWM is intended to be used by CBP Officers, (CBPOs), bonded warehouse proprietors, importers, and other parties in the import-export community.

This publication brings together many different references into one publication, including CBP laws and regulations, other agency issuances, and rulings dealing with bonded warehouses. These laws and regulations are paraphrased for the sake of simplicity and easier reading. CBPOs, proprietors, importers, and other interested parties are cautioned to study the actual text of the cited laws or regulations before making decisions based on information found in the BWM.

While a majority of this manual deals with bonded warehouse operations and procedures, limited information is also included regarding centralized examination stations (CES) and container freight stations (CFS). For those needing information on foreign trade zone (FTZ) operations, please refer to the Foreign Trade Zone Manual. Policy and procedures internal to CBP and not intended for public dissemination are not included in the BWM. As new measures are implemented by CBP in respect to bonded warehouses, new or substituted pages amending this manual will be distributed for inclusion.

We believe that this document will prove to be of great value to the import-export community, and we welcome suggestions from readers for any additions, deletions or corrections to improve this document. Please forward any correspondence concerning this document to:

U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, Attn: Cargo Security and Controls, Office of Field Operations.



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PART 1 - INTRODUCTION, PURPOSE, AND INTERPRETATIONS

1.1 Purpose - The purpose of the BWM is to set forth in one document all the instructions, guidelines, and other information that CBPOs, bonded warehouse proprietors and importers need to know for effective operation and supervision of bonded warehouses and their processes and procedures. The BWM does not itself have the force of law, and is intended only as a convenient compilation of the reference material cited in section 1.3 of BWM and of CBP procedures previously included in the Customs Issuance System.

1.2 Authority – On March 1, 2003, the U.S. Customs Service was renamed U.S. Customs and Border Protection (CBP) and, was formally transferred, along with its authority and functions, to the Department of Homeland Security. As a result, any references in the BWM to Customs law, regulation, policy, procedures, or manuals, are to be interpreted as authorities and functions of CBP.

1.3 Referenced Material – Where portions of the BWM are taken directly from the Tariff Act, Customs Regulations, or other sources, the referenced source is shown in parentheses directly after the related sentence, section, or other passage. The references contain abbreviations as follows:

BWM	Bonded Warehouse Manual
CD	Customs Directive
CFR	Code of Federal Regulations
HTS	Harmonized Tariff Schedule of the U. S.
Slip Op	Opinion of Court of International Trade
TA	Tariff Act of 1930, as amended
TD	Treasury Decision

The following CBP Forms (CBPFs) are used by both CBPOs and bonded warehouse proprietors during the normal course of CBP operations. These forms are referred to extensively in the BWM and a copy of each form may be found at <http://www.cbp.gov/xp/cgov/toolbox/forms>. Further questions regarding the use of or availability of these forms may be directed to the CBP Program Manager at (202) 344-1450.

- CBPF 300 - BONDED WAREHOUSE PROPRIETOR'S SUBMISSION**
- CBPF 301 - CBP Bond**
- CBPF 3299 – Declaration for Free Entry of Unaccompanied Articles**
- CBPF 3311 – Declaration for Free Entry of Returned American Products**
- CBPF 3461 – Entry/Immediate Delivery**
- CBPF 3485 – Lien Notice**
- CBPF 3499 – Application and Approval to Manipulate, Examine, Sample Or Transfer Goods**
- CBPF 4315 – Application for Allowance in Duties**
- CBPF 5125 – Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.**
- CBPF 6043 – Delivery Ticket**
- CBPF 7501 – Entry Summary with Continuation Sheets.**
- CBPF 7512 – Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit**
- CBPF 7523 – Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.**

1.4 Paraphrasing of Law and Regulations - For language simplification purposes, many of the provisions of the BWM taken from law, regulations, or other sources are paraphrased rather than quoted directly. Users of the BWM should review the referenced source itself before taking any definitive action on a particular matter.

1.5 Instructions vs. Guidelines - The BWM provide both instructions and guidelines for CBPOs, bonded warehouse proprietors, and importers. Generally, instructions to proprietors and importers are conveyed through use of the word "shall," and are based on requirements of law or regulation. Instructions to CBPOs are conveyed through use of the word "will" or the immediate context. Guidelines for CBPOs, proprietors, or importers are indicated through use of the words "should," "may," section headings, or the context of the section or paragraph. Guidelines do not have the force of law, but express CBP preference or an area in which CBP management may exercise some discretion or judgment.

1.6 Port Director Authority – Wherever the term “port director” appears in the BWM, it refers not only to port directors themselves, but also to any CBPO, Import Specialist, Entry Specialist, Seized Property Specialist, and any other CBP personnel to whom a port director delegates authority.

1.7 Customs and Border Protection Issuances - The CBP Issuance System is used to provide instructions, guidelines, and other information to CBPOs as to interpretations and procedures for carrying out the laws and regulations. Most of the issuances are Customs Directives (CD's). Another kind of issuance is the Policy Statement, a brief statement of CBP policy rather than a specific instruction or guideline. Although CBP Directives and Policy Statements are internal instructions, most of them contain instructions requiring port directors to disclose their contents

to proprietors and importers.

1.8 Rulings, Opinions, and Disagreements - Anyone who desires an interpretation or explanation of any law or regulation administered by CBP may request an opinion or binding ruling pursuant to the procedures noted in 19 CFR 177. An opinion or ruling issued pursuant to this procedure represents the official position of CBP in the matter. Any disagreement or question concerning a matter involving the judgment or discretion of the port director should be directed to the Director, Field Operations (DFO) having jurisdiction over the CBP port, if the matter has been fully discussed with the port director.

1.9 Disclosure of Information - Much of the information in CBP possession affecting bonded warehouse proprietors and importers is available for disclosure pursuant to the procedures in 5 USC 552 and 19 CFR Part 103. Information exempt from disclosure is listed in 19 CFR 103.12, which includes trade secrets and confidential financial and business information.

1.10 Local CBP Procedures - The BWM contains and describes instructions, guidelines, and procedures authorized by CBP Headquarters for use throughout the entire U.S. Customs territory. Port directors have the discretion to adopt additional procedures that supplement and amplify service wide procedures, but are not covered by the BWM. If local procedures conflict with service wide procedures and this manual, proprietors and importers are invited to identify the conflict to CBP Headquarters, Office of Field Operations, for resolution.

1.11 CBP Cargo Processing System – Any reference to ACS will be replaced by ACE as that functionality is deployed.

PART 2 - SUPERVISION OF BONDED WAREHOUSES, PROPRIETORS' RESPONSIBILITIES, AND CUSTOMS FEES

2.1 General – Merchandise stored in a bonded warehouse is under the joint custody and joint supervision of both CBP and the bonded warehouse proprietor. CBP will supervise the proprietor in performing all labor on the merchandise.

2.2 Audit-Inspection Supervision - The proprietor exercises physical supervision while CBP exercises general supervision through the audit-inspection program (19 CFR 19.4). The Audit-Inspection program is based on six principles:

1. Determination by CBP of the identity and nature of merchandise before or upon its deposit in the bonded warehouse so that the initial responsibility of the proprietor for the merchandise can be reliably determined.
2. Issuance of a permit by CBP to the proprietor for receipt, delivery from the bonded warehouse, and any processing while the merchandise is stored in the bonded warehouse.
3. Assumption by the proprietor of responsibility for the merchandise in the bonded warehouse, including physical supervision, recordkeeping, storage conditions, and processing. The warehouse proprietor and the carrier who delivers or receives the merchandise will jointly determine the quantities of merchandise received and delivered.
4. Performance by CBP of compliance reviews and audits to verify whether the proprietor is properly supervising the bonded warehouse and maintaining its accounting and recordkeeping systems in compliance with the law and regulations.
5. Adequate bonding of the warehouse and assessment of liquidated damages by CBP to assure compliance with the requirements for proper supervision by the proprietor.
6. Authority for CBP to suspend or revoke the active status of any bonded warehouse that cannot or does not comply with the rules and regulations for bonded warehouses operations.

2.3 CBP Supervision - The extent and character of CBP supervision of bonded warehouses and bonded warehouse transactions shall be generally in accordance with 19 CFR Part 19. The port director may detail or assign a CBPO of the appropriate grade and position classification to supervise any transaction or procedure at a bonded warehouse. CBP supervision may be exercised through audits of records, quantity counts of merchandise in inventory, compliance reviews of selected transactions or procedures, or reviews of recordkeeping, security, or storage conditions. The port director may order the physical supervision by a CBPO of any merchandise transaction in a bonded warehouse for which a CBP permit is required (19 CFR 19.4).

(a). Physical Supervision - CBP is authorized (19 CFR 19.4) to conduct physical supervision of any deposit, removal, activity, or other physical activity in a bonded warehouse to insure conformity with the laws and regulations. However, because of the time and expense of

physical supervision, supervision is usually conducted through the audit-inspection method (See Secs. 8.2(a) and 16.5 BWM).

(b). CBP Staffing for Audit-Inspection – DFOs and port directors shall ensure personnel coverage necessary to perform mandatory scheduled compliance reviews of all bonded warehouses under their jurisdiction. Port directors should request assistance from the Regulatory Audit Division (RAD), or other CBP disciplines as necessary, to assist in compliance reviews at complex bonded warehouse operations.

(c). Access to Bonded Warehouses - The bonded warehouse proprietor must permit CBPOs access to the bonded warehouse to conduct compliance reviews, audits, and other lawful tasks (19 CFR 19.4). Access to the bonded warehouse includes the furnishing by the proprietor to CBPOs of special equipment for their use in conducting compliance reviews and audits, such as weighing, gauging, and measuring equipment; protective clothing (for cold storage, hazardous substances, safety hardhat, etc.); and peripheral equipment. The proprietor should cooperate in any compliance review, audit, or other CBP supervised task, including the location of records and merchandise, so as to achieve its prompt completion and ensure a rapid return to normal bonded warehouse operations.

(d). Search Authority – A bonded warehouse is within CBP search authority (19 USC §482 and 1555) so a search may be conducted of the bonded warehouse at any time without a warrant (See Sec. 16.15(a) BWM). Compliance reviews, audits, and other supervised tasks will be conducted during normal business hours of the bonded warehouse.

2.4 Compliance Reviews - A compliance review is a visit by CBPOs from a port office to physically observe or examine transactions, records, procedures, or conditions in the bonded warehouse. The purposes of compliance reviews are to: (1) determine whether bonded warehouse proprietors are in compliance with all applicable laws and regulations; (2) provide valid data to maintain ongoing risk assessments; (3) coordinate with RAD when planning and conducting compliance assessments and audits of bonded warehouses, and; (4) determine, through limited testing, the reliability of bonded warehouse operating and reporting procedures. It is mandatory that compliance reviews be conducted using the Compliance Review Handbook for Bonded Warehouses which was issued in December, 2007.

(a) Notification and Arrival - Compliance reviews are made without advance notification to the proprietor, except when prior notification is in the interest of CBP. However, CBPOs are instructed to announce their arrival to the manager or person in charge at the bonded warehouse before the compliance review is started. Proprietors may request identification by badge number from uniformed officers and by U.S. Government identification card from non-uniformed officers. CBPOs are instructed to invite the manager or person in charge to have a representative present during the compliance review, but they will not be required to have a representative present, except as needed to locate records or merchandise, move merchandise, operate special equipment, or otherwise provide access to the merchandise and records. CBPOs will seek to minimize disruption of the day-to-day operations of the bonded warehouse.

(b). Duration, Frequency, and Conduct - A compliance review will generally be limited to

a day or two to allow the widest possible CBP presence at all bonded warehouses in the port. However, a compliance review may be extended in duration, at the discretion of the port director, for a further check on the basis of initial findings. The frequency of compliance reviews will depend on CBP assessments of the risk represented by the bonded warehouse, but normally the port director will determine the frequency of compliance reviews. During a compliance review, CBPOs will conduct a quantity count of selected entries of merchandise, and reconcile the quantity with records in the permit file folder and the proprietor's inventory and recordkeeping system. However, CBPOs may at times focus their efforts on security, safety, housekeeping, receipt or delivery procedures, or other conditions or transactions considered significant in their assessment of the bonded warehouse risk.

(c). Completion and Closeout – If a CBPO is unable to reconcile a discrepancy among the quantity count, the permit file folder balance, and the balance in the proprietor's inventory and accounting records, they are instructed to give the proprietor an opportunity to resolve the discrepancy before the compliance review is completed. At the end of the compliance review, the CBPOs are instructed to conduct a closeout interview with the person in charge to communicate their findings. In some cases, the CBPOs may issue an oral warning to correct a minor violation. Their findings are tentative, since port management must review them before any specific action is taken. The person in charge may provide comment during the closeout interview or later to port management to explain apparent violations or to seek to avoid a claim for liquidated damages. CBPOs may make follow-up visits to the bonded warehouse to determine whether minor violations have been corrected or to verify assertions made by the proprietor.

2.5 Audits – An audit is a systematic and thorough check of the proprietor's (and sometimes an importer's) inventory and financial records against the permit file folder and the actual quantity of merchandise in the bonded warehouse. Audits are conducted by CBP regulatory auditors assigned to a regional, rather than a port, CBP office. Audits are conducted much less frequently than compliance reviews; their frequency is closely held information that is not disclosed by CBP. Audits are much more intense and of longer duration than compliance reviews, and may generally be expected to last from a week to several months, depending on the size of the inventory, initial problems disclosed, kinds of merchandise in the bonded warehouse, and many other factors. Auditors may be expected to look at all kinds of bonded warehouse transactions, conditions, and requirements, not only current but also for past years. For that reason, they may request access to closed as well as open files.

(a). Arrival and Notification - Auditors, in contrast to CBPOs, provide advance notification of an audit, except when it is in the best interest of CBP to conduct an unannounced audit. Upon arrival, auditors will announce themselves to the appointed representative of the proprietor. The proprietor may request appropriate government identification of the auditors.

(b). Closeout - Auditors will provide a closeout interview with the proprietor to discuss their findings. These findings are tentative, since they must be reviewed by regional audit management before presentation to the port director. The port director, not the auditors, takes management action on the audit findings. The audit report is to be shared with the bonded warehouse unless an investigation is opened. 19 U.S.C, 1509(b)(4).

2.6 Coordination of Compliance Reviews and Audits - Compliance reviews and audits are separate and independent, but mutually supporting methods of verifying compliance by the proprietor with the laws, regulations, and procedures. When a port director determines that the assistance of RAD is needed, the auditors should receive a copy of each compliance review report made by CBPOs. Also, the port director should review a copy of any RAD report conducted on a specific bonded warehouse.

2.7 Supervision by Proprietor - Pursuant to audit-inspection, the proprietor is responsible for all aspects of physical supervision of the bonded warehouse, except to the extent that the port director chooses to conduct physical supervision. Generally, the proprietor is responsible for supervising all transportation, receipts, deliveries, sampling, recordkeeping, repacking, physical and procedural security, conditions of storage, manipulation, destruction, security, and storage conditions, in compliance with the laws and regulations (19 CFR 19.4(b)(1)).

2.8 Proprietor Responsibilities - The proprietor's responsibilities for supervision are set out in 19 CFR Parts 19, 113 and 144. These responsibilities are significant in that failure to carry them out may result in claims for liquidated damages against the proprietor. Following is a list of the specific provisions, with a short description of their contents. The contents are described in more detail in various sections throughout the BWM.

<u>Section</u>	<u>Responsibility</u>
19.3(d)	Provide and update employee list
19.4(b)(2)	Permit access to bonded warehouse by any CBPO
19.4(b)(1)	Supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security in the warehouse
19.4(b)(3)	Safekeeping of merchandise and records concerning merchandise entered in bonded warehouses. Do not disclose proprietary information in permit file folder to any unauthorized person
19.4(b)(6)	Maintain security of merchandise in bonded warehouse
19.4(b)(6)	Secure inlets and outlets to bonded tanks by seals or locks
19.4(b)(7)	Store merchandise in a safe and sanitary manner; and leave doors and entrances unblocked
19.4(b)(8)	Receive and record packages by marks and numbers, or by weighers' and gaugers' numbers; store separately any packages in bad order or packages not identical in quantity or

quality of contents; mark shipments with entry or general order number; store packages with same entry or general order number in same location; provide upon CBP demand record balance of goods in any entry or lot

- 19.6(a)(1) Provide copy of joint report of discrepancy within 5 business days of agreement
- 19.6(b)(1) Provide copy of joint report of discrepancy promptly to the port director
- 19.6(d)(2) Retain original of blanket permit to withdraw in proprietor's records (permit file folder)
- 19.6(d)(2) Provide copy of joint discrepancy report promptly; retain copy of partial release (supplementary withdrawal); account for all goods covered by blanket permit to withdraw
- 19.6(e) Report any broken, missing, or improperly affixed seal and hold shipment intact
- 19.9(c) Release general order merchandise only upon presentation of a CBP permit; report discrepancy within 2 business days of joint agreement
- 19.11(c) Do not allow manipulation before a permit is issued by the port director
- 19.11(d) Do not allow manipulation before permit is issued by the port director; maintain detailed running account of manipulations pursuant to blanket permit
- 19.12(d)(1) Record all transactions in proprietor's accounting and inventory records by bonded warehouse entry or general order number
- 19.12(d)(3) Report theft, overage, or extraordinary shortage or damage to the port director immediately upon discovery, and confirm in writing within 5 business days afterward.
- 19.12(d)(4) Maintain permit file folders in secure area and make them available for inspection by CBPOs at all reasonable hours.
- 19.12(d)(4) Maintain permit file folder and update by filing documents in it within 5 business days after event occurs

- 19.12(d)(4) Upon final withdrawal of merchandise, review permit file folder documentation; notify CBP of any merchandise not withdrawn or removed; and submit file folder to CBP within 30 calendar days
- 19.12(d)(4)(ii) Upon order from port director, submit permit file folder for merchandise not withdrawn during general order period.
- 19.12(g) Prepare annual bonded warehouse proprietor's submission on CBPF 300 within 45 days after end of business year; submit letter to port director within 10 business days after preparation of CBPF 300 stating it is completed and available for review if needed.
- 113.63(a)(1) Comply with all regulations regarding receipts, safekeeping, and disposition
- 113.63(a)(2) Receive only merchandise authorized by CBP regulations
- 113.63(a)(3) Maintain all records required by regulations and produce them upon demand to CBPO
- 113.63(b)(2) Keep safe any merchandise in custody, including repacking merchandise when necessary for its safety and preservation
- 113.63(b)(3) Comply with regulations related to handling of merchandise
- 113.63(c)(3) Dispose of merchandise in a manner authorized by regulation
- 113.63(c)(4) File timely any report required by regulation
- 113.63(e) Comply with regulations relating to facility and employees
- 113.63(h) (4) Reimburse or exonerate the United States and its officers with respect to specified costs

Additional responsibilities of proprietors of Class 6 and 7 bonded warehouses are cited in Parts 13 and 14.

2.9 Private Business Operations of Bonded Warehouses - The rates of storage and labor in private bonded warehouses are a matter for agreement between the importer and the proprietor, but the port director may, with the consent of all parties in interest, be called upon to determine those rates (19 CFR 19.7(b)). Labor rates are subject to State and Federal laws governing such rates. All merchandise in a bonded warehouse shall be held liable for the expenses of labor and storage chargeable at customary rates and for all other expenses accruing upon the goods (19

CFR 19.7(a)). Subject to the order of priority set forth in CBP regulations, the proprietor is entitled to a share in the distribution of proceeds from auction sales for labor and storage expenses remaining unpaid (19 CFR 127.31 and 127.32).

2.10 CBP Reimbursement and Fees - 19 U.S.C. §1555(a) requires proprietors to reimburse CBP for its supervision costs. However, collection of the fee was suspended pursuant to the Omnibus Budget Reconciliation Act of 1987 for as long as a merchandise-processing fee is in effect.

(a). Merchandise Processing Fee – The merchandise-processing fee is due at the time withdrawal documents are submitted for approval. The fee must be reported pursuant to Collection Code 499 on a CBPF 7501. The fee is authorized pursuant to the Omnibus Budget Reconciliation Act of 1986 (19 USC §58c and 19 CFR 24.23). The following merchandise is not subject to the fee:

1. Articles covered by Chapter 98 HTS, except those covered by Item Nos. 9802.00.40, 9802.00.60, and 9802.0080 HTSUS;
2. Products of insular possessions of the U. S. (Gen. Note 3(a)(iv) HTSUS);
3. Products of beneficiary countries of the Caribbean Basin Economic Recovery Act Gen. Note 3(c)(v) HTSUS);
4. Products of least-developed developing countries (Gen. Note 3(c)(ii)(B) HTSUS);
5. Products of Israel entered after 9/16/98 (19 CFR 24.23(c)(5))
6. Products of Canada and Mexico (Gen. Note 12, HTSUS)

All current and future Free Trade Agreements should be consulted to determine whether there is an exception from the MPF).

7. Merchandise described in Gen. Note 19, HTSUS, released pursuant to 19 USC 1321 or imported by mail.

(b). Harbor Maintenance Fee (HMF) - Importers may be subject to the HMF for commercial cargo loaded or unloaded from a commercial vessel. The HMF is 0.125 per cent of the value of the merchandise, and is authorized pursuant to 26 U.S.C. §4461 and 19 CFR 24.24. The fee is due and payable at the time of entry, and must be reported pursuant to Collection Code 499 on CBPF 7501. It is payable only for cargo loaded or unloaded at certain ports specified in 19 CFR 24.24(c), and is not applicable at all to cargo loaded or unloaded from aircraft or land vehicles.

1. **Import Vessel Movements** - The HMF is payable upon a formal warehouse entry, not upon withdrawal, and must be shown on a CBPF 7501 pursuant to Collection Code 501. The

HMF is not collected by CBP if the shipment would otherwise be entitled to informal entry procedures (19 CFR 24.24(e)(3) and (d)(3)(i)).

2. Domestic Vessel Movements - If merchandise is withdrawn from a bonded warehouse for transport on a commercial vessel to another U.S. port, the HMF is payable by the shipper (the person who pays the freight) on a quarterly basis in the manner specified in 19 CFR 24.24(e)(1). Special intraport rules apply to domestic movements as specified in 19 CFR 24.24(d)(1). The HMF is not collected on any domestic shipment whose value does not exceed \$1,000 or if the total value of all shipments for which a fee was assessed for the quarter does not exceed \$10,000 (19 CFR 24.24(d)(3)(ii) and (4)).

PART 3 - BONDED WAREHOUSE CLASSES, CONSTRUCTION, ESTABLISHMENT AND CHANGES

3.1 Classes of Bonded Warehouse - There are currently eleven classes of bonded warehouses, so designated according to ownership of the merchandise and the nature of operations performed therein (19 CFR 19.1(a)). Different classes are subject to different treatment pursuant to the Customs Regulations and Customs issuances.

Class 1 - Premises owned or leased by the Government, now used mostly for the storage of seized merchandise pending their final disposition according to law. These bonded warehouses may not be used for the storage of bonded merchandise except at ports where there is no Class 3 bonded warehouse in operation (19 USC §1560). The requirements made of proprietors do not apply to the Government as the proprietor of a Class 1 bonded warehouse.

Class 2 – An importer’s private bonded warehouse used exclusively for the storage of merchandise belonging to or consigned to the proprietor of the bonded warehouse.

Class 3 – A public bonded warehouse used exclusively for the storage of merchandise imported or subject to IRS tax. This bonded warehouse is generally available to any importer, at the option of the proprietor. A proprietor may impose restrictions on the use of the bonded warehouse by importers, including allowing the exclusive use of the bonded warehouse by one importer. Unclaimed, abandoned, and seized merchandise may be stored in Class 3 or 4 warehouses pending final disposition (19 CFR 19.1(a)(1) and Part 10 of this manual).

Class 4 - Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. These warehouses are used exclusively for the storage of merchandise imported by the proprietor is also known as a private bonded warehouse.

Class 5 - Bonded bins or parts of buildings or of elevators to be used for the storage of grain. There are currently no active Class 5 bonded warehouses in the United States, so the BWM contains no instructions or guidelines for their use or supervision. 19 CFR 19.29 through 19.34 cover their operation.

Class 6 – These bonded warehouses are used for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to IRS tax. Their use and supervision are covered pursuant to Part 13 BWM. The manufacture for home consumption or exportation of cigars is also permitted in these bonded warehouses; however, there are currently no Class 6 warehouses for the manufacture of cigars in the United States (19 USC §1311).

Class 7 – These bonded warehouses are established to smelt or refine imported metal-bearing materials for exportation or domestic consumption. Their use and supervision are

covered pursuant to Part 14 BWM (19 USC 1312).

Class 8 – These bonded warehouses are established for the purpose of manipulating imported merchandise pursuant to CBP supervision and at the expense of the proprietor. If the port director permits, occasional manipulations may be conducted in these warehouses without a formal designation as a Class 8, pursuant to 19 CFR 19.11. However, when repeated manipulations are anticipated, the proprietor should apply for designation as a Class 8 warehouse.

Class 9 - Known as “duty-free stores”. Merchandise in these warehouses must be owned or sold by the proprietor and delivered from the bonded warehouse to an airport or other exit point for exportation by, or on behalf of individuals departing from the Customs territory for foreign destinations.

Class 10 - International Travel Merchandise (ITM) - Per Sec. 555(c) TA (passed 11/00). Regulations are pending. ITM is conditionally duty-free or domestic merchandise that is placed aboard aircraft on international flights for sale to passengers aboard the aircraft. ITM is not merchandise incidental to the operation of a duty-free sales enterprise.

Class 11 – These bonded warehouses are used exclusively for the storage and disposition of General Order (G.O.) merchandise as described in 19 CFR 127.1. See Part 10 for further information.

Combination of Classes - A bonded warehouse may be designated as more than one class, e.g., Class 2, 4, and 8 provided that it meets all the requirements of each of those classes.

Any part of Class 1, 2, 3, 4, 5, 6, or 7 bonded warehouses may be designated as a Class 8 bonded warehouse, at the discretion of the port director, whenever exigencies of CBP so require.

Authority of Port Director Concerning Classes - The port director may deny an application for a bonded warehouse or demand a change in a bonded warehouse application, or refuse entry or delivery to a bonded warehouse, whenever approval or acceptance would lead to a use of the bonded warehouse which is not in accordance with its designated class.

3.2 Construction of Bonded Warehouse - Aside from limitations imposed by the class of bonded warehouse, there are few limitations on the construction of building and enclosures used for bonded warehouses. They may, and do, vary widely in their dimensions, design, and building materials. If a portion of the bonded warehouse 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 (19 CFR 19.4).

(a). Vessels and Barges - Vessels and barges may operate as bonded warehouses when they are at rest and not engaged in the transport of cargo or persons, so long as they otherwise meet the requirements of the law and regulations governing bonded warehouses. If they are subsequently to be used to transport cargo or persons, the proprietor shall apply for temporary suspension or discontinuance of the bond (19 CFR 19.3(b) and (c) and Sec. 3.6 (b) BWM). While operating

under the warehouse bond, the vessel or barge may be moved from one location to another at the same port only upon application to and permit by the port director and with the written consent of the surety.

(b). Parts of Buildings – When only a part of a building is used as a bonded warehouse, the bonded and non-bonded portions shall be effectively separated by partitions of substantial materials and constructed in such a manner as to render it impossible for unauthorized personnel, (i.e., persons not authorized by the port director or the proprietor or persons not authorized by law) to enter the premises without such violence as to make the entry easy to detect (19 CFR 19.4). The extent and method of separation between the bonded and non-bonded areas is at the discretion of the port director. The port director is authorized to waive the partition requirement between the bonded and non-bonded areas of bonded warehouses. Bonded merchandise shall be segregated so that only bonded merchandise is stored in the bonded area and no bonded merchandise is stored outside the bonded area. However, the boundaries must be clearly marked. The port director may impose the partition requirement if the proprietor fails to properly store the merchandise or maintain the boundary marking, or allows removal of merchandise from the bonded area without CBP permit.

3.3 Definition of Bonded Warehouse - The determination of what is a bonded warehouse is important because a separate application to establish or alter a bonded warehouse and separate proprietors annual submission on CBPF 300 (see Sec. 5.7(a) BWM) is required for each such warehouse. The street address, location, or both determine what constitutes a bonded warehouse (19 CFR 19.2(a)). The port director's determination in this matter is final. In most parts of the United States, local governments have designated street addresses to parcels of property even in sparsely settled outlying areas. Where there is no street address, a bonded warehouse may be considered to be a contiguous location under the operational control of one entity or related group of entities. The following examples may be used in defining a bonded warehouse:

(a). Example 1 - A proprietor has two bonded warehouses at one street address and three warehouses at three different street addresses. The two located at one address would be considered as one warehouse, and the three located at three different addresses would each be considered as separate warehouses.

(b). Example 2 - A duty-free store has a bonded warehouse at a street address one mile from the perimeter of an airport. It also has three bonded cribs at the airport. The airport has no street address, but it is under the operational control of the county airport authority. The bonded warehouse is one facility, and the three cribs constitute another facility (unless the port director is satisfied that the proprietor, through its inventory recordkeeping system, can provide CBP upon demand with the proper on-hand balance for each inventory item at each location).

(c). Example 3 - An applicant has two tank farms located on opposite sides of a road, 2 miles from each other so that no part of one is across from any part of the other. The applicant wants to bond two tanks in each tank farm. There would be two bonded warehouse locations, one on each side of the road.

(d). Example 4 - Example as above, except that the two tank farms are directly across the

road from one another. The entrance to one is directly across from the entrance to the other, and the road is only a service road designed to provide access to tank farms in the area. The tank farms may be considered contiguous and as one bonded warehouse.

(e). Example 5 - At the same street address, Proprietor Number 1 leases the second and third floors of a building and Proprietor Number 2 leases the fifth floor. Proprietor Number 1 has one bonded warehouse, and Proprietor Number 2 has a separate bonded warehouse.

3.4 Application for a Bonded Warehouse - An owner or lessee desiring to establish a bonded warehouse shall make written application to the port director of the port nearest to where the warehouse is located (19 CFR 19.2(a) and (b)). While there is no form for the application, it should be written on the applicant's letterhead. The application shall include:

1. the description and location of the premises;
2. class(es) of bonded warehouse;
3. a statement as to whether the bonded warehouse is to be operated only for storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse (this statement does not apply in the case of an application for a class 2 or 7 warehouse);
4. if the bonded warehouse is to be operated as a private bonded warehouse (class 2 and possibly 4), a statement as to the general character of the merchandise to be stored therein and an estimate of duties and taxes on all merchandise in the bonded warehouse at any one time; and
5. if required by the port director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility.

(a). Supporting Documentation - The following documentation will be submitted with the application. If not submitted as required, the application will not be approved.

1. The applicant shall also submit evidence of fire insurance coverage on the proposed bonded warehouse or, if the applicant does not have fire insurance, the applicant shall submit a certificate signed by an official or agent of each of two insurance companies that the building is acceptable for fire insurance purposes.

2. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. The diagram should be site-oriented by showing surrounding street names or landmarks. If the bonded warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipelines and shall be certified as correct by the proprietor of the tank. 19 CFR 19.2(b) specifies that a gauge table showing the capacity of the tank in United States gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall also accompany the application.

3. When a part or parts of a building are to be used as the bonded warehouse, the applicant shall file a detailed description of the materials and construction of all partitions.

4. When the proprietor is the lessee of the premises covered by the application and bond, he shall furnish a stipulation concurred in by the surety, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will:

a. transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse;

b. pay all duties, charges, or exactions due on such merchandise; or

c. otherwise dispose of such merchandise in accordance with the Customs laws and regulations.

5. Port directors may require a list of names and addresses of all officers and managing officials of the applicant, and all persons who have a direct or indirect interest in the operation of the bonded warehouse (19 CFR 19.2(a)).

Port directors may require additional documentation as needed to fully evaluate the bonded warehouse application. Documentation commonly required by port directors include:

A. a list of all employees of the bonded warehouse as specified in 19 CFR 19.3(d). This list is used to facilitate the background inquiry of the applicant pursuant to 19 CFR 19.2(f) and Section 3.5(b) BWM.

B. a statement of the end of the applicant's business year, for compliance with 19 CFR 19.12(g).

3.5 Processing of Application – The approval of an application for a bonded warehouse is a privilege, not a right, of the applicant. The port director will approve the application only when he or she is satisfied after due consideration, that the revenue will be protected and U.S. laws and regulations will be fully complied with. The port director will review all the facts pertinent to the application to determine whether the application should be approved. This section outlines the principal factors for consideration by the port director.

(a). Warehouse Survey - To assist the port director in determining whether the application should be approved, he or she shall have a physical survey conducted of the bonded warehouse to determine its security, suitability, and fitness as a bonded warehouse. The objectives of the survey are to determine whether the bonded warehouse is in accordance with the information contained in the application and its supporting documents; whether all regulatory and special administrative requirements are met; and whether the bonded warehouse meets CBP security standards and specifications.

1. **Security Requirements** - CBP security standards and requirements are found in 19

CFR 19.4(b)(6) (for separating parts of buildings and safety and sanitary conditions); and 19 CFR 19.12(d)(4) (security of permit file folders). Special requirements are made of Class 6 warehouses (see Part 13 BWM); and high-security storage of Title II weapons pursuant to the Bureau of Alcohol, Tobacco and Firearms (ATF) conditional import permits (see Sec. 6.5(b) BWM).

2. **Survey Report** - The CBPO will prepare a survey report which addresses CBP physical and procedural standards, as well as other pertinent regulatory requirements as noted in the preceding paragraph. The CBPO will present his or her findings to the applicant. The survey findings do not constitute a decision on the bonded warehouse application. The applicant will be afforded an opportunity to correct any deficiencies noted before the port director makes a decision on approval of the application.

3. **Survey Follow-Up** – Assuming a need for a follow up, the warehouse will be inspected again at a date chosen by the port director to determine whether recommendations for improvements have been carried out. If the bonded warehouse proprietor declines or is unable to institute improvements to correct significant deficiencies, the port director will deny the application.

(b). Background Inquiry - As a condition of approval of the application, the port director may request an inquiry by CBPOs into the qualifications, character, and experience of the applicant, e.g., personal history, financial and business data, credit and personal references (19 CFR 19.2(f)). If the background investigation discloses derogatory information about the applicant or its officers or employees, the warehouse application may be denied.

1. **Fingerprint Cards** – The port director may require an individual applicant to submit fingerprints on an FD 258 or electronically at the time of filing the application, or in the case of applications for a business entity, may require the fingerprints on an FD 258 or electronically, of any officer of the company and any employee who has or will have access to the recordkeeping functions. Fingerprints should be taken by CBPOs and submitted to local Immigration and Customs Enforcement (ICE) for processing. ICE will forward the fingerprints to the Criminal Justice Information Service (CJIS) for processing and analysis. CJIS will forward the results of the analysis to the Cargo Control Branch, Office of Field Operations, CBP HQ, for dissemination to the proper field office. If derogatory information is noted, the port director has the final authority in determining employment eligibility.

2. **Disclosure of Information** – Any information disclosed in this inquiry is confidential and will not be disclosed to the public, including the proprietor, except as provided in the Freedom of Information Act (5 USC §552). However, if an employee gives written consent, the port director may disclose such information to the proprietor as is covered by the terms of the consent statement.

(c). Other Considerations - As noted in Section 3.5 BWM, approval of the application is not a right. There are no specific limits on the grounds for denial of the application, except that no application may be denied in an arbitrary or capricious manner. This is in contrast to the specific grounds required for suspension or revocation of an already-approved bonded warehouse

application pursuant to 19 CFR 19.3(e) (see Sec. 16.7(a) BWM). Some factors that port directors have considered in making a decision to deny a bonded warehouse application include:

1. the bonded warehouse is too far outside the port limits to allow efficient use of CBP resources for supervision. (Ordinarily, a 35-mile distance from the port limits is a reasonable guide).
2. there is insufficient staffing or other CBP resources available in the port to properly supervise the bonded warehouse;
3. the bonded warehouse will not generate a sufficient volume of transactions to justify the dedication of CBP resources for its supervision;
4. the bonded warehouse and/or application do not meet all administrative, regulatory, and legal requirements;
5. in the case of duty-free stores, the applicant cannot demonstrate that it can export its merchandise with no or minimal CBP staffing for supervision or with the approval of the administrator of the exit point through which the merchandise is exported (Sec. 555 (b) TA).

(d). Approval or Denial of Application - When the port director has the information for a decision, he or she will promptly notify the applicant in writing whether the application has been approved or denied. The application will not be provisionally approved pending the completion of a regulatory or administrative requirement, e.g., completion of a background investigation. Thus, if an application is approved, it will be suspended or revoked only as provided in 19 CFR 19.3(e) and (f). If the application is denied, the notification will set forth the grounds for denial. The port director's decision of denial is the final CBP administrative determination in the matter. (19 CFR 19.2(g)).

(e). FIRMS Codes – After the approval of the warehouse application by the port director, a Facilities Information and Resources Management System (FIRMS) code should be assigned to each new bonded warehouse. FIRMS' codes can only be added into ACE. The CBP user needs the ACE user role of "Facilities Administrator" in order to perform creation and maintenance of Facility records. The first step in creating the Facility Operator account is to have an ACE Top Account created. (Contact the ACE Accounts Service Desk to submit this request). The request must include

- Business entity, Organizational Structure (Corporation, Partnership, etc.), End of the Fiscal Year (of the business entity).

Once the Top Account has been created, enter the ACE portal and go to the Facility Operator account view. Click on the accounts tab. Use the Account Selector to locate the specified Top Account. After successful location of the Top Account, click on the Create Facility Operator tab.

The information used to create the Facility Operator account should match the CBPF 5106 data on file for the EIN/SSN of the bonded warehouse proprietor. The address for the facility

operator should match that which is on the custodial bond. This is not necessarily the same address as the physical street address of the actual bonded facility.

Only active Customs bonds can be entered on the facility record.

A Contact (name, address, and phone number) will be required for the creation of the Facility Operator. This can be either a contact at the company headquarters office of the facility operator or a contact at the actual bonded facility.

There are seven Document Types that are 'required' in the creation of the facility. Each must be addressed with a status and status date. There is also the opportunity to attach electronic files to each Document type such as .doc., pdf., txt, .xls, .ppt., etc. Additional Document Types can be added to the Facility record during the create process or during later maintenance of the Facility record.

After reviewing the entered details, click the Save button. A confirmation screen is displayed with the name of the facility and the ACE assigned FIRMS code.

Note: Examples of non-bonded facilities include a CBP office or other government operated facility. In these cases there is no Trade bonded operator so it is not created under either a Top Account or a Facility Operator Account. From the Facility Operator account view, you proceed directly to the Create Facility tab to create the non-bonded facility.

Maintain Facility

Use the Account Selector to locate the specified Facility. Once located, the header information can be maintained by way of the Edit button. Addresses, contacts, Document Types, employees, and Managing Officials can be added and maintained through the respective sub tabs on the facility record.

Note: If the bond on the facility record has been terminated, the facility header information cannot be edited and saved. An error message will appear when attempting to save any edits. The terminated bond must be removed from the facility record in order to maintain the facility information.

General Information on Facility Operators and Facilities in ACE

- The Facility Operator is the trade business entity with the custodial bond which covers the customs business activity in the bonded facility. A Facility Operator may operate bonded facilities of different types (including FTZ Sites), in different Ports. The Facility Operator need only be created in ACE once.
- Complete Facility information is required for the create facility process in ACE. If the creation process needs to be aborted due to lack of data, no information is saved in ACE for the facility. The create process must be started from the beginning for any subsequent attempt.

- The FIRMS code is automatically assigned by ACE at the end of the create facility process.
- All facilities are located, viewed, and maintained through the Facility Operator account view, Accounts tab.

If the bond on the facility record in ACE has been terminated, the facility header information including 'Status' cannot be edited and saved. An error message will appear when attempting to save any edits. The terminated bond must be removed from the facility record in order to maintain the facility information.

1. **Bonding and Receipt of Merchandise** - Upon approval of the application, a custodial bond shall be executed on CBPF 301, containing the basic custodial bonding conditions set forth in 19 CFR 113.63. The bond shall be in the amount set by the port director, but will not be less than \$25,000 for each building or part of a building. The bond may cover all bonded warehouses of the same proprietor in the port. The bond may also cover carrier, cartman, and CFS activities of the same principal. In case of multiple coverage, the port director at the port where the bond is on file will determine the amount of the bond. General regulations concerning bonds are found in 19 CFR Part 113. No merchandise will be deposited in the bonded warehouse until the bond has been executed and approved.

3.6 Application for Alteration or Other Change - This section covers applications to alter, relocate, temporarily suspend, discontinue, or make other changes in the bonded status of a warehouse.

(a). Alteration or Relocation – Proprietors shall file a written application with the port director for permission to alter or relocate a bonded warehouse within the same port (19 CFR 19.3(a)). An alteration is any change to the structure of the bonded warehouse or any change in the bonded area of a warehouse that affects security standards or regulatory requirements. A relocation is a change of site location within the same port. A blueprint showing alterations to the bonded area shall accompany the application or if a new relocation area, a blueprint showing measurements, openings, etc., as prescribed by Section 3.4(a) BWM, Item 2.

1. **Processing of Application** - The warehouse to be altered or relocated will be surveyed by CBP for cargo security purposes and a report made as provided in Section 3.5(a) BWM. After reviewing the application and the cargo security survey report, the port director will promptly notify the applicant in writing of his or her decision to approve or deny the alteration or relocation of the warehouse as provided in Section 3.5(d) BWM.

(b). Voluntary Suspension or Discontinuance - A proprietor may request to discontinue or temporarily suspend the bonded status of the warehouse by making a written application to the port director. Temporary suspension may not exceed 1 year. The application will not be approved until all merchandise in the bonded warehouse has been withdrawn or has been transferred to another bonded warehouse without expense to the government (19 CFR 19.3(b) and (c)). The partition requirement of 19 CFR 19.4(b)(6) applies to the temporary suspension of floor space within a bonded warehouse. To reestablish the bonded status of a warehouse that

was voluntarily discontinued, a written application must be made pursuant to 19 CFR 19.2(a) and (b) and Section 3.4 BWM. Suspension or revocation of the bonded status of a warehouse by the port director is covered in Section 16.7 through 16.10 BWM.

(c). Other Changes - There are other changes that affect the bonded status of a warehouse which do not necessarily constitute alteration, relocation, temporary suspension, or discontinuance.

1. **Name, Address, or Organizational Status Change** - If the name of the proprietor firm is changed, the proprietor should notify CBP through a rider to the custodial bond pursuant to the procedure in 19 CFR 113.24. The same procedure should be used if there is a change in the address of the principal or a change in the trade names and unincorporated divisions of a proprietor that is a corporate principal on the custodial bond. If an address change is due to relocation of the warehouse, permission must be obtained from director of the port nearest to the location of the facility pursuant to Sections 19.3(a) and 3.6(a)..

2. **Change in Ownership** - If ownership of the proprietor firm changes hands through sale or other transfer, the procedure to be followed depends on whether the firm is individually owned, a partnership, or a corporation. If the firm is individually owned or a partnership, a new application for a bonded warehouse shall be made pursuant to the procedure in 19 CFR 19.2 and 3.4 BWM. If the firm is a corporation and the change in ownership does not result in a new corporate entity with a different corporate charter, the change will be treated as a name change as described in the preceding Section 3.6(c)(1) BWM. If the firm is a corporation and the change results in a new corporate entity, a new application for a bonded warehouse shall be made pursuant to the procedures in 19 CFR 19.2 and 3.4 BWM.

3. **New Bond Requirement** - At the option of the port director, a proprietor may be required to furnish a new custodial bond within 10 days notice from the port director pursuant to 19 CFR 19.2(e) or within 30 days pursuant to 19 CFR 113.13(c) or (d) to correct or remedy any deficiency in the bond which affects the risk to the revenue represented by the bonded warehouse and the merchandise stored therein. If the bond is not timely furnished, no additional merchandise shall be sent to the bonded warehouse and merchandise therein shall be removed at the expense of the proprietor (19 CFR 19.2(e)). Failure to furnish a new bond also constitutes a ground for suspension or revocation of the bonded status pursuant to 19 CFR 19.3(e)(6) (See Sec. 16.7 BWM).

4. **Change in Bonded Warehouse Class** - The proprietor may file a written application, with the port director, for a change in the warehouse class designation.

5. **Lease Termination** - If the lease of a bonded warehouse is terminated, the merchandise shall be removed from the warehouse in accordance with the stipulation specified in 19 CFR 19.2(b) and 3.4(a) BWM, Item 4 prior to the expiration of the lease covering the premises. The bonded warehouse status shall thereafter be treated as discontinued.

3.7 Bonded Warehouse File – A permanent file of all bonded warehouses operating within the port will be maintained which will include the original application and approval; applications

and permits to alter, relocate, suspend, re-bond, or discontinue a bonded warehouse; and actions taken by the port director to suspend or revoke the operating status of the warehouse.

PART 4 - ENTRY AND DEPOSIT IN BONDED WAREHOUSE

4.1 General - Buildings or parts of buildings are designated as bonded warehouses for the storage of imported merchandise entered for warehousing, placed in General Order (G.O) status, pursuant to seizure, or for the manufacture or manipulation of merchandise in-bond (19 U.S.C. §1555(a)) This part covers only merchandise entered for warehousing or manipulation. Deposit of merchandise into G.O. status is covered in Part 10 BWM. The basic authority for a warehouse entry is contained in Section 557(a) TA.

4.2 Duration in Bonded Warehouse – The total period of time for which merchandise may remain in a bonded warehouse shall not exceed 5 years from the date of importation (not the date of entry) (19 U.S.C. §1557(a) and see Sec. 7.12 BWM) unless such time period is extended by the Port Director for good cause shown. This should be carefully noted in cases where the merchandise may have already been stored in CBP custody, i.e., another bonded warehouse, G.O. status, or a Foreign Trade Zone (FTZ).

4.3 Eligibility for Entry for Bonded Warehouse – With a few exceptions, any merchandise subject to duty may be entered for warehousing and deposited in a bonded warehouse (19 U.S.C. §1557(a)). Imported merchandise that is conditionally or unconditionally free of duty is considered by CBP to be still subject to duty and may be entered for warehousing. Merchandise which is not eligible to be entered for warehousing is listed below:

(a). Domestic Merchandise - Domestic merchandise or imported merchandise which has already been entered for consumption is not subject to duty and may not be entered for warehousing with some exceptions:

1. certain domestic merchandise may be deposited in Class 6 and 7 warehouses (see Parts 13 and 14 BWM); Can't domestic merchandise be deposited in a class 9 warehouse too?
2. certain domestic distilled spirits and wines may be transferred to a bonded warehouse from ATF bond (see Sec. 11.2(d) and (e) BWM);
3. domestic merchandise which has been exported and subsequently re-imported into the United States is considered subject to duty and may be entered for warehousing, and;
4. merchandise that has been entered into a bonded warehouse may be withdrawn for consumption but retained in the bonded warehouse (see Sec. 7.11(a) BWM).

(b). Other Limits on Eligibility - Aside from domestic merchandise, there are certain other restrictions on the eligibility of merchandise to be entered into a bonded warehouse:

1. Merchandise whose importation is prohibited may not be entered into a warehouse. However, merchandise whose entry into the U.S. commerce is prohibited may be entered into a warehouse for exportation or for manipulation to put it into condition to be eligible for U.S. consumption.

2. Perishable merchandise or explosive substances other than firecrackers may not be entered into a warehouse (19 U.S.C. §1557(a)). Merchandise entered into a warehouse with a controlled environment designed to retard spoiling or deterioration (e.g., cold storage bonded warehouses) is not regarded as perishable merchandise. Explosive substances are any substances controlled by the provisions of 27 CFR Part 55. A list of explosive substances is maintained by ATF and is published as ATF Publication 5400.8. Firecrackers are Class C explosive common fireworks, as defined in 49 CFR Part 173, with casings not more than 1/2" in length or more than 1/4" in diameter, with a total explosives content of not more than 2 grains in weight (49 CFR 173.100(r)(10)). Dangerous or highly flammable merchandise may be entered into a bonded warehouse only with the written consent of the insurance company which has insured the bonded warehouse (19 CFR 144.1(a)).

3. Merchandise previously entered (other than a warehouse entry) may subsequently be entered into a warehouse only if the goods remained in continuous CBP custody, pursuant to the procedures specified in 19 CFR 144.1(c). Merchandise on a Temporary Importation under Bond (TIB) entry may be entered on a warehouse entry any time after entry but before expiration of one year from the date of importation. However, a warehouse entry does not relieve the importer from the TIB bond obligation to export or destroy the merchandise.

4. There are certain restrictions for merchandise on a warehouse entry after its transfer from an FTZ. No merchandise in privileged foreign status, or comprised in part of such merchandise, may be entered on a warehouse entry. Merchandise in zone-restricted status may be entered on a warehouse entry only pending exportation, unless the Foreign-Trade Zones Board (<http://ia.ita.doc.gov/ftzpage.html>) has specifically authorized a warehouse entry for another purpose. A warehouse entry may be used for merchandise in non-privileged status. However, the 5-year warehouse period begins on the date of importation into the United States, and a warehouse entry may not be filed for merchandise imported more than 5 years before the date on which the entry is presented. A warehouse entry may not be used for textile and textile products that have been changed in an FTZ as provided for in 19 CFR 146.63(d) unless the entry is endorsed by the port director to show that the merchandise may not be withdrawn for consumption (19 CFR 146.64(c)).

4.4 Warehouse Entry Filing - Imported merchandise must be entered within 15 calendar days after importation (19 CFR 141.5). There are three basic procedures to initiate the entry filing process: entry, entry summary that acts as an entry/entry summary, and immediate delivery. Warehouse entry and entry summary procedures are covered in 19 CFR 144 Subpart B, 142.3, 142.4, 142.12, and 142.13. The vast majority of entries filed with CBP are entries for consumption, and most of the procedures applicable to entries for consumption apply also to warehouse entries. This section covers entry procedures peculiar to a warehouse entry, and does not attempt to cover all entry procedures that may be applicable to importers and transferees.

(a). Entry - Entry is that documentation required to be filed with the appropriate CBP port office to enable CBP to determine whether the merchandise is admissible into the warehouse and to secure the transfer of imported goods or a permit for their deposit into a bonded warehouse. A warehouse entry is filed on a CBPF 3461 (Entry/Immediate Delivery), with Entry Type Code 21 shown in Block 3. An invoice must accompany the form, packing list, and any other

documentation required by law or regulation, unless its presentation is waived. A CBPF 6043, (Delivery Ticket), authorizing transfer of the merchandise to the bonded warehouse, shall also accompany the entry unless the merchandise has been permitted by the port director to be delivered directly to the bonded warehouse. An entry summary must be filed within 10 working days, as provided for in 19 CFR 142.12, except in situations in which entry summary must be filed at the time of entry per 19 CFR 142.13. A consumption entry may be filed for part of a shipment and a warehouse entry filed for the remainder, even though the shipment arrived pursuant to one in-bond transaction.

(b). Entry/Entry Summary - At the option of the importer (or as required by the port director pursuant to 19 CFR 142.13), an importer may file the entry summary documentation at the time of entry. In this case, a warehouse entry/entry summary is filed on a CBPF 7501, (the CBPF 3461 is not required, see 19 CFR 144.11(a)). Entry Type Code 21 shall be shown in Block 7 of the CBPF 7501, and the location where the goods are available for examination, followed by the name of the bonded warehouse where the goods will be delivered, shown in Block 21. The CBPF 7501 was revised in 2005 and new instructions were issued and are available on the Internet under the FORMS tab. An invoice must accompany the form, packing list, and any other documentation required by law or regulation. The form will also be accompanied by a CBPF 6043, unless;

1. the merchandise has been permitted by the port director to be delivered directly to the bonded warehouse or

2. the port director has authorized transfer to the bonded warehouse on the reverse side of an extra copy of the CBPF 7501 which is used as a delivery ticket.

(c). Immediate Delivery - For merchandise eligible for immediate delivery (19 CFR 142.21), goods may be transferred to a bonded warehouse using a CBPF 3461, Code 21, accompanied by a CBPF 6043. A CBPF 3461ALT, used at border ports, may also be used for immediate delivery to bonded warehouses, although it cannot be coded as a warehouse entry. Supporting documentation for immediate delivery on a CBPF 3461 or CBPF 3461 ALT is the same as that for a warehouse entry (Sec. 4.3(a) BWM), except that no commercial invoice is required. Instead the importer may provide a proforma invoice, waybill, or other document that adequately describes the merchandise. The immediate delivery procedure is found in 19 CFR Part 142 Subpart C.

(d). Electronic Entry Filing - Some importers have been authorized to file warehouse entries electronically, through the Automated Broker Interface (ABI) program. Pursuant to this program, a provisional release is granted electronically, but must be followed by a (the regulations do not require a paper CBPF 3461 and 7501; see 19 CFR 143.36) CBPF 6043 must be presented for transfer of the merchandise to the bonded warehouse.

4.5 Certification of Entry and Penalties - The importer of record on a warehouse entry shall sign the CBPF 3461 and CBPF 7501 to certify that the information provided is true and accurate and may be subject to civil penalties under Section 592 TA for fraudulent, negligent, or grossly negligent acts, statements or omissions in connection with the entry. In addition, the importer

may be subject to a fine or imprisonment for entry of goods which have been falsely classified (18 USC §541), by means of false statements (18 USC §542), smuggling (18 U.S.C. 545) or for less than the legal duty (18 USC §543).

4.6 Right to Make Entry - The right to file a warehouse entry may be exercised only by the owner or purchaser of the goods, or when designated by the owner, purchaser or consignee, a licensed Customs broker with power of attorney (19 USC §1484(a)(2)(c)) A bonded warehouse proprietor may not file entry on behalf of another party unless he is a licensed Customs broker.

4.7 Place of Filing - When the entry or immediate delivery procedure is utilized, the appropriate documentation shall be presented to the location designated for entry. CBP will not accept an entry at any location outside a port of entry, even if the bonded warehouse is located outside the port. Where the entry/entry summary procedure is used, the appropriate documentation shall be presented at the port office during normal business hours (19 CFR 141.62(b)(1)).

4.8 Warehouse Entry Bond - Merchandise will not be released for transfer to a bonded warehouse unless a single transaction or continuous Importation and Entry Bond on CBPF 301, containing the bond conditions set forth in 19 CFR 113.62, is on file with CBP (19 CFR 142.4(a)). This bond guarantees compliance by the importer with the basic importation and entry requirements, and is separate from the custodial bond required of the bonded warehouse proprietor.

(a). Bond Amount – An importer bond, used for all warehouse entries, in an amount determined by the port director. The port director as provided in 19 CFR 113.13(c) will periodically review the amount of continuous bonds and increased security may be demanded as provided in 19 CFR 113.13(c) and (d). In the case of a single transaction bond, the bond amount will be no less than the total entered value plus all duties, taxes and fees that apply.

4.9 Entry Processing and Release - Warehouse entries, like consumption entries, are processed by CBP on a selective basis according to the risk to the revenue and CBP's enforcement requirements. A CBPO's signature and date of approval of transfer to the warehouse on a CBPF 6043 or on the reverse side of a CBPF 7501, combined with a copy of the warehouse entry document, constitutes the permit to transfer and deposit of the merchandise in the bonded warehouse.

4.10 Direct Delivery to a Bonded Warehouse - Usually merchandise is held at the place of unloading or arrival at the port pending the filing of an entry and release by CBP. However, importers may request that in-bond shipments be delivered directly to a warehouse on the grounds that it is necessary to safeguard the merchandise from damage or deterioration. The port director will approve the request on a case-by-case basis. Such a request must have the concurrence of the bonded carrier since the merchandise remains on the carriers' bond until CBP authorizes the deposit of the merchandise to the bonded warehouse.

(a). Receipt at a Bonded Warehouse - The merchandise will be held intact at the bonded warehouse (outside the bonded area, where possible) under the carrier's bond until a warehouse entry or rewarehouse entry is filed and delivery is authorized to the bonded warehouse

proprietor. If the conveyance is sealed, the proprietor may, at the discretion of the port director, break the seal as provided in 19 CFR 19.6(e), and unlade the merchandise at the warehouse (outside the bonded area, where possible) pending delivery authorization. The shipment must be retained intact and segregated from other merchandise in the bonded warehouse until delivery authorization; however, the proprietor may inspect the merchandise to determine the condition of the shipment in accepting delivery from the carrier.

(b). Proprietor Responsibility - Although direct delivery merchandise may have been physically placed in the bonded area of a warehouse, it is not considered deposited in the warehouse pursuant to 19 CFR 19.6(a)(1) until delivery has been authorized. Only then does the proprietor assume responsibility for the merchandise and for meeting the recordkeeping, security, and storage requirements of 19 CFR 19.4.

4.11 Examination of Merchandise - The purpose of examining merchandise covered by a warehouse entry is the same as that for merchandise covered by a consumption entry, i.e., to see that goods are admissible, truly and correctly invoiced, and that they are in conformity with all applicable laws and regulations. The port director is authorized to waive examination of certain merchandise (19 CFR 151.2(a)(2)). The decision of whether or not to examine is done on a selective basis using objective criteria through either manual or automated procedures such as ACS. Whether entry, immediate delivery, or entry summary serving as entry/entry summary is filed, the goods shall be made available for examination and inspection (normally at the place of unloading or arrival) in accordance with 19 USC §1499 in order to affect the release of the goods. Examination may be required for merchandise entered on a warehouse entry not only for admissibility and duty assessment purposes, but also to establish the liability of the proprietor for the merchandise.

(a). Centralized Examination Station (CES) - A CES is a privately operated facility at which imported merchandise identified by CBP for physical examination is made available to CBPOs for the purpose of inspection. Once merchandise is identified for examination, the importer or importer's agent is responsible for selecting the CES to be used (where there is more than one CES within the port and unless the port director has reason to make the selection), for arranging the transfer of the merchandise to the CES, and for paying the costs of the transfer as well as any fees charged by the CES for its services

(b). Examination at CES - Most examinations are done at a CES with the approval of the port director. If CBP determines that examination at a CES is necessary, a CBPF 3461 or CBPF 7501 will authorize transfer to the CES. Transfer is done under the bond of a licensed cartman, bonded carrier or freight forwarder. However, the importer may assume responsibility for the transfer under his entry bond, as provided in 19 CFR 113.62(f). In any case, the costs of the transfer and examination are the responsibility of the importer, as specified in 19 CFR 151.6 and 151.7(b).

(c). Examination at Location with no CES - At ports where there is no CES, the merchandise will be examined at the place of unloading or arrival of the merchandise at the port, unless the port director requires or allows the merchandise to be examined at another location. The port director will require that the importer execute a bond to move the merchandise. In

addition, the importer will be responsible for any additional expenses that CBP may incur including travel and subsistence of the examining CBPO as provided for in 19 CFR 151.7.

(d). CFS - the location designated by carriers for the receiving of cargo to be loaded into containers by the carrier. At discharge or destination ports, the term CFS means the bonded location designated by carriers for devanning of containerized cargo.

4.12 Rewarehouse Entry - Merchandise withdrawn from a warehouse in one port may be entered with a re-warehouse entry at a different port. 19 CFR Part 144 Subpart E and Section 7.6 BWM cover withdrawal for transportation from the first bonded warehouse. The port director may also require a re-warehouse entry to be filed on a transfer of goods from one warehouse to another at the same port (19 CFR 144.34(a)), or, for CBP control purposes, to transfer the right to withdraw. There is no limit on the number of re-warehouse entries that can be filed on the same merchandise (except for merchandise transferred from a Class 6 warehouse, per Section 13.5(f) BWM), so long as the rewarehouse entry is made within 5 years from the date of importation of the merchandise. The procedures for a rewarehouse entry are covered in 19 CFR 144.41.

(a). Entry Procedure - A rewarehouse entry shall be filed on a CBPF 7501, using Entry Type Code 22 (19 CFR 144.41(b)). A CBPF 3461 will not be accepted for a rewarehouse entry. The importer of record on the entry must appear as the importer of record on the rewarehouse entry unless the right to withdraw has been transferred (See Section 7.2(b) BWM). Either the importer of record on the warehouse entry or the transferee may appoint a licensed Customs broker to make entry on its behalf. If the importer of record on the rewarehouse entry is the same as the importer of record on the entry, or if a bond is already on file by a transferee who has established his right to withdraw the goods, no additional bond will be required by CBP for the re-warehouse entry. A CBPF 6043 will be filed with a CBPF 7501, unless transfer of the merchandise to the warehouse is authorized on the permit copy of CBPF 7501 or the port director per Section 4.9 BWM has authorized direct delivery to the warehouse.

(b). Duty - The appraised value and classification and rate of duty established on the original warehouse entry is the same amount of duty due on the re-warehouse entry except where:

1. certain classes of merchandise were excluded from the liquidation of the original warehouse entry; or

2. the rate of duty and/or tax was changed by either an Act of Congress or by Presidential Proclamation (19 CFR 144.41(e) and see Sec. 9.6 BWM).

(c). Permit to Transfer to a Bonded Warehouse - Merchandise to be entered for re-warehouse entry will be held at the place of unloading or arrival at the port pending CBP permit to transfer, unless direct delivery is authorized pursuant to Section 4.9 BWM. Because the goods were subject to examination upon the original entry, CBP does not usually examine goods entered for re-warehouse entry. After acceptance of the re-warehouse entry and any examination required, the merchandise will be released to a licensed cartman, bonded carrier or bonded warehouse proprietor for transfer to the bonded warehouse. A CBPO's signature and the date of

approval of transfer on a CBPF 6043 or the reverse side of a CBPF 7501 will constitute the permit to deposit the merchandise in a bonded warehouse.

4.13 Merchandise Entered but not Deposited - The warehouse proprietor is responsible for the merchandise in its quantity and condition as entered, with certain adjustments for discrepancies (19 CFR 19.6(a)(1)).

(a). Entry for Constructive Bonded Warehouse - Constructive warehousing is a mechanism which allows the port director to deal with temporary, unusual, and unforeseen situations where the importer wants to make a warehouse entry for the merchandise, but (1) there is no bonded warehouse at the port; (2) all existing bonded warehouses are filled, (3) there is a bonded warehouse but not one of the proper class or type, or (4) the merchandise is not readily moveable to a bonded warehouse. CBP policy has allowed an un-bonded structure or enclosure to be treated as a "constructive" bonded warehouse for receipt of the merchandise.

1. Limited Applicability - The constructive warehouse concept is limited by CBP to temporary, unusual, and unforeseen situations, since the operator of the warehouse is under no bonded obligation to perform the responsibilities set for proprietors in the law and regulation. The only bond covering the merchandise is the entry bond. Constructive warehousing will not be allowed by CBP solely to allow a warehouse entry pending the completion of warehouse application requirements, e.g. the background investigation.

2. Decision of Port Director - The decision whether to allow constructive warehousing rests with the port director, taking into account such factors as the nature of the merchandise, overall knowledge of the local warehousing situation, arguments of the importer, and past experience with the importer. The burden is on the importer to show that the need for constructive warehousing is temporary, unusual, and unforeseen. Generally, when repeat shipments or repetitive warehouse operations are anticipated, the importer will be required to submit an application to establish a bonded warehouse.

(b). Immediate Dock Withdrawal - The importer shall designate on the entry summary the warehouse in which the merchandise is to be deposited (19 CFR 144.11(c)). The merchandise will be sent to that warehouse unless an immediate dock withdrawal is filed or packages are designated for examination at another location (19 CFR 144.14). If an immediate dock withdrawal for transportation is filed, but the merchandise is not forwarded because of damage or other cause, the importer shall file another withdrawal for consumption or exportation of the merchandise, or designate a warehouse where the merchandise shall be deposited (19 CFR 144.36(b)).

(c). Combined Rewarehouse Entry and Withdrawal for Consumption - When the consignee of merchandise withdrawn for transportation wishes to pay duty and obtain possession of the merchandise immediately upon arrival at a destination, he may do so by filing a combined rewarehouse entry and withdrawal on a CBPF 7501, showing Entry Type 01 for a consumption entry. That is, although the transaction is not a true consumption entry, it will be filed as a consumption entry for CBP administrative purposes. An extra copy of the form is required for IRS purposes if the entry covers certain tobacco products (19 CFR 144.42). Such merchandise is

not deposited in a warehouse, and a permit to release may be issued on a CBPF 7501 upon deposit of estimated duties and taxes.

(d). Class 1 Warehouse Entry - When a warehouse entry is made for merchandise to be delivered to a Class 1 bonded warehouse (see Sec. 3.1 BWM, Item 1), the government is the proprietor. No other warehouse proprietor will be held responsible for merchandise entered into a Class 1 bonded warehouse.

(e). Manipulation Not Done in Bonded Warehouse – The port director may permit manipulation of merchandise elsewhere than in a bonded warehouse if the merchandise has been entered for consumption or a warehouse entry and is entitled to the warehousing privilege pursuant to 19 USC § 1557 (19 USC §1562 and 19 CFR 19.11(e)). Such merchandise may be withdrawn from the location pursuant to any form of withdrawal. If withdrawn for consumption, the withdrawal shall be made on a CBPF 7501.

(f). CBP Supervision - Such manipulations will be supervised by CBP to the extent deemed necessary by the port director (I don't believe the regulation cited, 19 CFR 161.1, exists. Perhaps you meant 19 CFR 19.11) (See Sec. 6.2(c)(4) BWM). Blanket applications to manipulate outside a bonded warehouse will not be approved by the port director. When repeated manipulations are anticipated, the port director will require the importer to submit an application for a Class 8 warehouse, unless the manipulations are performed in an FTZ (19 CFR 146.33).

(g). Irregular Delivery - Delivery by a cartman to a location other than the bonded warehouse designated in a warehouse entry is an irregular delivery, hence a default in the cartman's custodial bond (19 CFR 113.63(c)(2)). If a warehouse proprietor other than the one designated in the entry or CBPF 6043 receipts for the merchandise, the receipt is also a default in the custodial bond of that proprietor (19 CFR 113.63(a)(2)). In either case, the proprietor designated in the warehouse entry will not be held responsible for the merchandise unless and until he acknowledges its receipt in his bonded warehouse.

(h). Control of Merchandise Not Deposited in Bonded Warehouse - When no portion of a shipment of merchandise is to be delivered to a bonded warehouse for the reasons set forth in Section 4.12(a), (d), or (e) of the BWM, the importer shall designate on the entry the location of the goods during constructive warehousing, Class 1 warehouse storage, or manipulation (19 CFR 144.11(c)). The merchandise shall be delivered to the location as authorized on one of the forms specified in 19 CFR 125.31 and the cartman or carrier shall obtain the receipt of the proprietor of the location for the merchandise as listed in the form. Proprietor copies of withdrawals filed pursuant to any of the entries described in this section will be retained by CBP, since no bonded warehouse proprietor is required to retain those copies.

4.14. Transfer to Bonded Warehouse – The cartage of merchandise on a warehouse entry shall be done by a licensed cartman, bonded carrier or bonded warehouse proprietor (19 USC §1565). The importer shall select the cartman, bonded carrier or warehouse proprietor who will deliver the merchandise to the bonded warehouse subject to approval by CBP (19 CFR 125.22). Warehouse proprietors may be designated private bonded carriers for the transportation in bond

and cartage of their own merchandise (19 CFR 112.2(b)(3)). Payment of cartage costs is the responsibility of the importer.

(a). Transfer Procedure - Merchandise shall be transferred to a bonded warehouse from the place of unloading, CES, or other location only upon the order or approval of the port director by the carrier designated on the CBPF 6043, permit copy of CBPF 7501, or CBPF 7512 (in the case of in-bond shipments) (19 CFR 125.31). The carrier will sign the form upon pickup, acknowledging receipt of the merchandise. Upon delivery to the bonded warehouse, the proprietor shall sign for the merchandise (19 CFR 125.32). Merchandise will not be transferred to a bonded warehouse until it has been released from the place of unloading, CES, or other location; however, the port director may authorize transfer to a bonded warehouse for the purpose of examination, as provided in 19 CFR 151.6 or 151.7. In that case, the merchandise will be released after examination to the warehouse proprietor for deposit in the warehouse. See Appendices B.3, B.2, and E.2, respectively, for filled out samples of CBPF 6043, CBPF 7501, and CBPF 7512 used as documents for cartage of merchandise to (or from) bonded warehouses.

4.15 Bond Liabilities for Transfer to Bonded Warehouse - The custodial bond of the cartman or carrier is in effect from the time of receipt of the merchandise by the cartman or carrier until the proprietor signs for receipt at the warehouse of an accepted warehouse entry. At this time, the proprietors bond is obligated.

4.16 Delivery to Bonded Warehouse and Receipt - The warehouse proprietor shall accept only merchandise authorized pursuant to 19 CFR 113.63(a)(2). Acceptable evidence of CBP authorization for deposit of merchandise covered by a warehouse entry is the signature and date of permit to transfer by a CBPO on CBPF 6043, accompanied by a warehouse entry on CBPF 3461, CBPF 3461ALT, or CBPF 7501, or on the permit copy of CBPF 7501.

(a). Receipt Procedure - Upon delivery of the merchandise to the warehouse, the proprietor shall check the CBPF 6043 (or the reverse side of the CBPF 7501) to see that:

1. the signature of the appropriate CBPO and the date of permit to transfer to the warehouse are on the form;
2. the name of the warehouse shown on the form and on the warehouse entry is that of the receiving proprietor;
3. the quantity and description of the merchandise is the same as that of the merchandise actually received. The quantity check is important since the cartage transaction on the CBPF 6043 may cover only a portion of the merchandise on the warehouse entry, and; if the CBPF 6043 or CBPF 7501 accurately reflects the merchandise and transaction, the proprietor shall countersign the CBPF 6043 (or the reverse side of CBPF 7501) to acknowledge receipt of the merchandise (19 CFR 125.32). If the CBPF 6043 or CBPF 7501 does not accurately reflect the merchandise and transaction, the proprietor shall refuse receipt of the merchandise. If the proprietor does not accept the merchandise or provide a written receipt, the cartman will report to the port director its inability to deliver the merchandise (19 CFR 125.36). The proprietor shall supervise all receipts of merchandise (19 CFR 19.4(b)(1)). The proprietor shall check the seal

and conveyance condition and report this and the concurrence of the carrier or cartman to the port director (See Sec. 8.3(c) BWM). At the discretion and with the authorization of the port director, the proprietor will break any seal affixed by CBP and take an accurate count of the merchandise in the conveyance. The proprietor will then notify the port director with this information. The merchandise shall be delivered directly into the bonded area and not be allowed to be stored, even temporarily, outside the bonded area. Upon receipt into the bonded area, the proprietor shall mark the packages with the entry number, unless the port director has approved an exception from this requirement. Such exceptions are given principally for FIFO recordkeeping, per Section 6.6 BWM.

(b). Receipt into Records - Upon receipt into the warehouse, the proprietor shall:

1. record in a receiving report or document using a Customs entry number or unique identifier if an alternative inventory control method has been set. (19 CFR 19.12(c)(1));
2. verify that quantities received by reconciling with a receiving report or document such as an invoice and report any discrepancy to the port director as provided in 19 CFR 19.6(a)
3. record the receipt of the merchandise into its accounting and inventory records by warehouse entry number (19 CFR 19.12(c)(3)) and;
4. open a permit file folder bearing the warehouse entry number, and place the permit copy of the CBPF 3461 or the CBPF 7501 and the delivery document (CBPF 6043 or CBPF 7512) therein (19 CFR 19.12(d)(4)).

(c). Liability of Bonded Warehouse Proprietor - The proprietor shall be responsible for the quantity and condition of the merchandise reflected on the warehouse entry (CBPF 3461 or CBPF 7501) adjusted by (1) any allowance made pursuant to 19 CFR Part 158, Subparts A and B, and (2) any discrepancy report made jointly by the proprietor and the bonded carrier or licensed cartman or lighterman, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A joint report of any such discrepancies shall be made within 5 business days of agreement and placed in the permit file, and a report made to the port director for action as provided in Section 8.3 BWM (19 CFR 19.6(a)(1)). However, note that proprietors are not liable for merchandise on a warehouse entry that was not delivered to their particular warehouse, per Section 4.12 BWM. See Sec. 8.3 BWM for discrepancy reporting procedures upon receipt of merchandise at a warehouse.

PART 5 - PROPRIETOR RECORDKEEPING AND REPORTING RESPONSIBILITIES

5.1 Authority for Proprietor Recordkeeping - The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of the Tariff Act (Sec. 624 TA). The Secretary of Treasury may delegate this authority to the Secretary of Homeland Security. Pursuant to this general authority, regulations have been promulgated pursuant to 19 CFR 19 and 19 CFR 163.1 requiring warehouse proprietors to maintain certain records and make certain reports as described in this Part of the BWM. These records and reports are necessary for proper audit-inspection supervision of the warehouse.

5.2 Authority for Importer Recordkeeping - Any owner, importer, consignee, or agent thereof who imports or knowingly causes to be imported any merchandise into the United States shall make, keep, and render for examination and inspection such records which (1) pertain to any importation, or the information contained in documents required in connection with the entry of the merchandise, and (2) are normally kept in the ordinary course of business (19 USC §1508). This requirement is further described and interpreted in 19 CFR 163.2.

5.3 Accessibility and Retention of Records - The permit file folders shall be kept in a secure area and shall be made available for inspection by CBPOs at all reasonable hours (19 CFR 19.12(d)(4)). Inventory and accounting records shall be maintained for access by CBPOs (19 CFR 19.4). The proprietor shall maintain all the records required by the regulations relating to merchandise received in bond and produce the records upon demand by an authorized CBPO (19 CFR 113.63(a)(3)). Generally, the foregoing regulations mean the records must be maintained at or near the warehouse. After the permit file has been sent to the port director, the inventory and accounting records need not be retained at or near the warehouse, but should be retained in the same CBP port as the warehouse for 5 years from the final withdrawal of the merchandise from the warehouse (19 CFR 19.4(b)(4)). An importer or its agent shall retain records concerning the importation for 5 years from the date of entry (19 CFR 163.4). The concealment or destruction of records concerning an importation (1) which have been demanded by CBP or (2) for the purpose of suppressing evidence of fraud, constitutes a felony pursuant to 18 USC §551.

5.4 Inventory and Accounting Records - All merchandise entered, destroyed, manipulated, withdrawn, or removed from a warehouse shall be recorded in the proprietor's accounting and inventory records by warehouse entry or G. O. number. The records shall be kept in sufficient detail to permit effective determination by CBP of the proprietor's compliance with the regulations and the correctness of the annual submission (19 CFR 19.12(a)). The entry or G.O. number should be readily identifiable with the associated permit file, financial accounting system of the proprietor, and the annual submission. The proprietor shall provide from the inventory and accounting records, upon request by a CBPO, a record balance of goods covered by any warehouse entry, G.O., or seizure so a physical count can be made to verify the accuracy of the record balance (19 CFR 19.12(d)(2)).

(a). Transfer of Right to Withdraw - When a portion of an original warehouse entry lot is transferred to a new owner pursuant to the provisions of 19 CFR Part 144, Subpart C, the proprietor shall maintain a separate account and inventory balance for each owner of goods covered by the same warehouse entry (19 CFR 144.32(b)). However, if the right to withdraw is

transferred only on the withdrawal document, the proprietor need not maintain a separate account (See Sec. 7.2(b)(4) BWM).

(b). Prudent Businessman Rule - The inventory and accounting records to be maintained are those that a prudent businessman in the same type of business can be expected to maintain. The records to be maintained are affected to some extent by the nature of business relationships between the proprietor and its customers and by the class of warehouse. However, listed below are some of the records a prudent warehouse proprietor could be expected to maintain:

1. All Bonded warehouses:

Notices of Shipment to Bonded warehouse
Notices of Arrival at Port
Consignee Copies of Bills of Lading
Pickup orders and Delivery Notices
Gate Logs
Merchandise Checking and Receipt Documents
Overage, Shortage, and Damage Reports for Receipts
Freight Claim Documents for Receipts
Insurance Claim Documents for Receipts
Freight Billings and Payment Documents for Receipts
Orders and Receipts into Inventory
Storage Location Documents
Inventory Ledgers and Accounts, with On-hand Balances
Physical Inventory Reports
Inventory Relief Documents
Security and Theft Reports
Insurance Claims for Shortage and Damage in Bonded Warehouse
Seal Purchase Orders, Receipts, and Use Logs
Bank Deposit Slips and Statements
Cancelled Checks or Other Payment Receipts
Cash Transaction Payment and Receipt Documents
Delivery Orders with Carrier Receipts
Notices of Shipment to Consignees
Shippers Copies of Bills of Lading
Freight Billing and Payment Documents for Deliveries
Notices of Receipt of Deliveries
Freight and Insurance Claim Documents for Deliveries
Overage, Shortage, and Damage Reports on Deliveries
Federal, State, and Local Government Licenses and Permits
ATF Forms for Receipt of Alcoholic Beverages

2. Public Bonded warehouse:

Receipt Notice to Client
Storage Charge and Handling Fee Schedule
Storage Contracts
Storage Billings and Payment Receipts

Manipulation and Handling Orders from Clients
Overage, Shortage, and Damage Reports to Clients
Shipment Notices to Clients

3. Private Bonded warehouses:

Records Required of Importers or their Agents Pursuant to 19 U.S.C. §1508 and 19 CFR 163.2.:

Price Lists and Sale Offers
Purchase Orders from Buyers
Sale Confirmations
Merchandise Payment Documents
Delivery Confirmation Documents
Transfer Orders from Bonded warehouse /Work Orders

4. Other documentation for duty-free stores, manufacturing warehouses, and smelting and refining warehouses is covered in Parts 12, 13, and 14 of the BWM.

5.5 Permit File Folders - The proprietor shall open and maintain up-to-date permit file folders in a secure area containing all receipts, damage and shortage reports, manipulation requests, specific and blanket removals and partial releases (19 CFR 19.12(d)(4)). This includes all documents that provide evidence of the quantity and condition of merchandise in the bonded warehouse covered by the entry or lot number. The permit file serves two purposes: (1) it provides evidence that the proprietor had a permit to receive, manipulate, destroy, remove, or otherwise handle the merchandise (See Item 2 in Sec. 2.1 BWM), and (2) it provides an accounting of the merchandise so CBP can properly liquidate the warehouse entry. The file is a CBP owned file that is maintained by the proprietor until all of the merchandise has been removed from the bonded warehouse and has been properly accounted for by warehouse withdrawals on CBPF 7501s.

(a). File Maintenance and Updating - Permit files will be maintained in folders marked with the warehouse entry, G.O., or seizure number. The files will be arranged in sequential order by U.S. Government fiscal year. Warehouse entry, G.O., and seizure lot files will be kept separate. Documents should be placed in the file in chronological order with the most recent documents on top or to the front. Permits shall be placed in the folder within 5 business days after the event occurs (19 CFR 19.12(d) (4)). "After the event occurs," means the same thing as the date of withdrawal, as explained in Section 5.5(e) BWM. Proprietors' records and other extraneous documentation should not be placed in the permit file folders.

(b). Security of Permit File Folders - Because permit files are CBP property and because the Government is required to protect confidential business information from disclosure (5 USC §552(b)(4)), there are special rules for the security of permit file folders. The permit file shall be kept in a secure area (19 CFR 19.12(d)(4)). Only authorized personnel (i.e., personnel of the proprietor who have a legitimate reason for being in the area or CBPOs or other individuals authorized by law or regulation) should be admitted to the area where the permit files or inventory and accounting records are maintained or stored. The proprietor and its personnel

shall safeguard and not disclose proprietary information contained in documents in the permit file folder to anyone other than the importer, transferee, or owner of the merchandise or their authorized agents. (19 CFR 19.4(b)(4)) Unauthorized disclosure is a default in the proprietor's custodial bond and is also grounds for suspension or revocation pursuant to 19 CFR 19.3(e)(8) and 19.3(f) of the proprietor's status as a warehouse proprietor.

(c). File Folder Contents - CBP forms and other documents that may be expected to be maintained in the permit file folder include, but are not limited to, those listed in this section. For a complete description of their uses, refer to the relevant sections of the BWM.

1. Deposits in Bonded warehouse

CBPF 6043, Delivery Ticket	Transfer to a warehouse under a warehouse entry, general order, or transfer from another warehouse
CBPF 7501, Entry Summary	"Live" bonded warehouse entry with code 21 or 22 and transfer to a warehouse may be used in lieu of CBPF 6043
CBPF 7512, Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit	Transfer to bonded warehouse or direct delivery by bonded carrier
CBPF 3461, Entry/Immediate Delivery	Bonded warehouse entry with Code 21 or 22
Manifest Discrepancy Report, on CBPF 7512, CBPF 6043, CBPF 7501, or commercial form	Quantity discrepancy found before or upon deposit in the bonded warehouse
Proprietor's form or Written statement	Quantity discrepancy found by importer or proprietor in conveyance with seals intact
CBPF 6423, Notice of Damage, Shortage, or Sample	When a CBPO finds a within-case shortage or damage or takes a sample upon examination

2. Adjustments

CBPF 3499, Application and Approval to Manipulate, Examine, Sample, or Transfer Goods	Application made to manipulate, examine, sample, transfer, abandon, or destroy merchandise
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CBPF 7501, Entry Summary

Notify CBP of overages and shortages found in merchandise in bonded warehouse

Proprietor's form or written statement

Minor losses or damage (less than 1 percent) which need not be reported to CBP, but must be recorded in permit file

CBPF 4315, Application for Allowance in Duties

Importer's application for allowance because of damage, excess moisture, or impurities

CBPF 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment

Default involving merchandise found by CBP

3. Removals

CBPF 7501, Entry Summary

Withdrawal of merchandise for consumption, blanket withdrawals for vessel or aircraft supplies, and diplomatic use.

CBPF 7512, Transportation Entry and Manifest of Goods Subject to Inspection and Permit

Withdrawal for transportation, exportation, or transportation and exportation or vessel/air-craft supply

CBPF 5125, Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use

Withdrawal of supplies for fishing vessels

CBPF 6043, Delivery Ticket

Removal for transfer to another bonded warehouse , transfer to dock for export or vessel/aircraft supply, transfer to place of sale

CBPF 5251, Order to Transfer Merchandise for Public Auction

Order for sale at auction at bonded warehouse or other location

CBPF 3461
CBPF 7501
CBPF 368
CBPF 3311
CBPF 3299
CBPF 7523

Entry permits of various types for merchandise released from general order for consumption

(d). Review and Submission of Permit File Folders - When the proprietor receives the final withdrawal for a warehouse entry or G.O., he shall (1) review the folder to see that all documentation is in order and in the file, accounting for all the merchandise covered by the entry or G.O. lot; (2) notify CBP of any merchandise still in the bonded warehouse for which a withdrawal has not been filed or which has not been removed from the bonded warehouse; and (3) send the permit file folder to the port director within 30 calendar days after final withdrawal (19 CFR 19.12(d)(4)). An exception is given for submission of file folders to CBP for G.O. pursuant to Section 10.8(e)(1) BWM. The final review shall include CBP special requirements, e.g. receipt of lading copies pursuant to blanket permits to withdraw, and review of sales ticket registers for duty-free store exportations. Final withdrawal means the date of withdrawal (see 5.5(e)) of the last merchandise in the bonded warehouse covered by a given warehouse entry or G.O. number.

1. Late Receipt of Permit - A document which is received by the proprietor after the permit file folder has been sent to CBP shall be transmitted to CBP with a reference to the warehouse entry, G.O., or seizure number of the folder within the 5 day period specified in 19 CFR 19.12(d)(4). Such late document receipts could include, for example, the lading copy pursuant to a blanket permit to withdraw (See Sec. 7.9(e)(5) BWM). CBPOs have authority to waive liquidated damages for such non-merchandise violations that occurred because of circumstances outside the control of the proprietor. (See Sec. 15.11 (c) BWM)

(e). Date of Withdrawal - For the purposes of the 5 day filing requirement and the 30 day permit file folder submission requirement of 19 CFR 19.12(d)(4), the date of withdrawal varies according to the type of withdrawal:

1. Withdrawal for consumption - date the proprietor receives a written permit to withdraw as evidenced by a signed and dated receipt for the document;

2. Withdrawal for transportation, exportation, transportation and exportation, or transfer to another bonded warehouse in the same port - date the cartman or carrier signs for receipt to remove the merchandise from the bonded warehouse, except as noted in Numbers 3 and 4;

3. Withdrawal pursuant to blanket permit to withdraw (Sec. 7.9 BWM) from duty-free store - date of delivery to purchaser for exportation as evidenced by date of departure of flight, signature for receipt by purchaser, or other evidence of delivery;

4. Withdrawal pursuant to blanket permit for vessel or aircraft supply - date the proprietor receives the lading copy from the vessel or aircraft as evidenced by a signed and dated receipt for the document, or 30 days after the cartman or carrier signs for receipt to remove the merchandise

from the bonded warehouse, whichever is earlier (see Sec. 7.9(e)(5) BWM);

5. Destruction - date of certification of destruction by proprietor or CBPO, as applicable;

6. Abandonment, Including Abandonment at End of the 5-Year Bonded Period - date the cartman or CBP contractor or purchaser at auction signs for receipt to remove the merchandise from the bonded warehouse, or a specific U.S. Government agency or charitable institution, as appropriate, signs to take possession of the merchandise, as applicable;

7. G.O. Merchandise - date the importer or cartman or CBP contractor or purchaser at auction signs for receipt to remove the G.O. lot from the bonded warehouse;

8. Merchandise which is missing, Not Accounted For, or Removed Without Permit - date the proprietor receives the Notice of Claim for Liquidated Damages on CBPF 5955A as evidenced by a signed and dated receipt for the document, or date of CBP acceptance of withdrawal for consumption on CBPF 7501, whichever is earlier; and

9. Non-extraordinary Shortage - date of discovery of the shortage as documented in the proprietor's inventory and accounting records and the permit file folder.

10. If the proprietor has the required document, but does not have evidence of the date of its receipt as specified in Items 1, 4, or 8 above, the period will commence on the date CBP issued a permit to release for consumption, the vessel or aircraft representative signed to certify lading, or CBP issued the notice of claim, as applicable.

5.6 Merchandise not Withdrawn from Bonded Warehouse - The port director monitors the warehouse entry file and the G.O. file to determine whether the 5-year bonded warehouse entry period (19 USC. §1557)(19 CFR 127.12(a)(2)) or the 6-month G.O. period (19 USC §1491)(19 CFR 127.4) has expired. At the required time, the merchandise will be ordered for sale at public auction on CBPF 5251. Upon receipt of the order for sale, the proprietor shall forward the permit file folder to the port director (19 CFR 19.12(d)(4)). The order of sale will be issued on CBPF 5251, pursuant to the procedure in 19 CFR 127.24, and will be accompanied by a Delivery Ticket on CBPF 6043 (to be signed by the receiving bonded carrier per 19 CFR 125.34).

If the sale is to be held at a location other than the bonded warehouse where the goods have been stored, a CBPF 5251 and CBPF 6043 shall be inserted in the permit file folder. The proprietor will retain the file folder until signature for receipt to remove the merchandise from the bonded warehouse per Item 6 of Section 5.5(e) BWM.

5.7 Reports by Proprietor – Bonded warehouse proprietors shall timely file any report required by the port director. Each business day of delay beyond the required time limit is treated by CBP as a separate non-merchandise default. (See Sec. 15.8 BWM)

(a). Annual Submission (19 CFR 19.12(g)) – Bonded warehouse proprietors shall prepare within 45 calendar days from the end of the business year, a Bonded Warehouse Proprietors Submission on CBPF 300 for each warehouse as discussed in Section 3.3 BWM. The CBPF 300

shall be maintained on file for 5 years by the proprietor. The CBPF 300 is a complete accounting of the beginning and ending inventory and of all receipts, manipulations, and removals during the year for each warehouse entry and G.O. lot in the bonded warehouse (19 CFR 19.12(g)). Within 10 business days of the completion of the CBPF 300, the proprietor will submit a letter to the port director certifying that the CBPF 300 has been prepared accurately and is available for CBP review. The port director makes the determination if the Proprietors Submission should be submitted and reviewed. Seizure lots being held in a bonded warehouse pursuant to the CBP national seized property contract (see Sec. 10.2(a) BWM) will not be reported on CBPF 300. Instructions for preparing the report are shown on the reverse side of the form.

(b). Annual Reconciliation Report – Instead of preparing the CBPF 300, proprietors of class 2 bonded warehouses and any proprietor who is the importer of the merchandise, shall prepare a reconciliation report within 90 days after the end of the fiscal year. A port director may grant an extension to this deadline for reasonable cause. The bonded warehouse proprietor shall retain this report for 5 years and make it available for a compliance review or audit by CBP. There are no forms specified for this report. Instructions for filling out the form can be found at 19 CFR 19.12(h)(2). Within 10 business days of completion of this report, the proprietor will send a letter to the port director certifying that the annual reconciliation report is complete, accurate, and available for CBP review. Any previously unreported shortages must be reported to the port director and any unpaid duties, fees or taxes paid at this time.

(c). Merchandise Discrepancy Reports - The proprietor shall report to the port director any discrepancy in quantity or condition of merchandise upon receipt, while the merchandise is in the bonded warehouse or upon removal from the bonded warehouse per 19 CFR 19.6(a), 19.6(b)(1), and 19.12(a)(3). Procedures for these reports are covered fully in Part 8 BWM.

(d). Employee List - The proprietor shall provide, within 30 days of a written demand by the port director, a list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of bonded merchandise (19 CFR 19.3(d)). This report is discussed in more detail in Section 6.5(c) BWM.

PART 6 - MANIPULATION, DESTRUCTION, AND STORAGE CONDITIONS

6.1. General - Bonded warehouse proprietors shall:

1. Comply with all CBP Regulations relating to the handling of bonded merchandise (19 CFR 113.63(b)(3));
2. Comply with all CBP regulations relating to the proprietor's facilities, conveyances, and employees (19 CFR 113.63(e));
3. Exonerate the United States and its officers from any risk loss, or expense arising out of the proprietor's custodial operation (19 CFR 113.63(h)(4)).
4. Comply with USDA regulations 7 CFR 319 Federal Register [Docket No. APHIS-2006-0129] RIN 0579-AC32 effective September 16, 2005. All regulated WPM entering the bonded warehouse must either be accompanied by the appropriate documentation or marking that ensures it is fully ISPM 15 compliance and does not impose any agricultural risk.

6.2. Manipulation in Bonded Warehouse - Upon permission by the port director, merchandise which has been entered and remains in continuous CBP custody may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in a bonded warehouse established for that purpose without payment of duties thereon. If subsequently withdrawn for consumption, duties thereon shall be assessed in the condition, quantity, and weight of the merchandise at the time of withdrawal, with such additions to or deductions from the appraised value as may be necessary by reason of the change in condition. The basis for assessment of duties is the final adjusted appraised value, and if the rate shall be based on or regulated by the value of the merchandise, such rate shall be based on or regulated by the adjusted final appraised value (19 USC §1562). There is no authority for manipulation of G.O. or seized merchandise. Section 4.12(e) BWM covers manipulations that take place elsewhere than in bonded warehouses. This section covers manipulations that take place within bonded warehouses.

(a). What Constitutes Manipulation - There is no precise definition of manipulation. It covers a wide variety of activities, ranging from simple packing or unpacking to some rather elaborate processes, up to but not including manufacturing. Generally, but not always, it involves at least the opening of the outer covering of the merchandise. Usually, dismantling or disassembly is treated as a manipulation.

1. Examples of Manipulation - Some processes that are considered manipulation are:

- A. opening containers for viewing, exhibition, examination, or sampling for commercial, not CBP purposes (19 CFR 19.8);
- B. packing, unpacking, or repacking (but not stuffing or unstuffing of intermodal containers); or labeling, tagging, or insertion of instructional or sales brochures;
- C. sorting, grading, or separation of damaged from good order merchandise;

2. Manipulation vs. Manufacturing - The level at which manipulation becomes manufacturing is determinable only according to legal precedents (binding rulings and case law). Generally, manufacturing occurs when merchandise is transformed into a new and different product. Some examples of manufacturing, and therefore not manipulation, are:

- A. cutting of wire to a specific length that constitutes a radio part;
- B. reconstitutions of citrus juice concentrate to single strength;
- C. assembly of watch movements and cases into watch heads.

3. Changes in Classification - Some manipulations may result in a change of tariff classification of the merchandise, e.g., bottling of tequila in containers holding not more than 4 liters (HTS Subheading 2208.90.50). A change in tariff classification does not necessarily mean that the merchandise has been manufactured in the bonded warehouse (19 CFR 19.11(d), last sentence).

4. Unpermitted Processes - Processes, which take place without application to or permit by the port director, are not manipulations, e.g., unpacking by thieves or vandals, drying or moisturizing due to weather conditions.

5. Prohibition on Certain Manipulations - Merchandise may not be fraudulently repacked, nor may any marks or numbers placed on packages be fraudulently altered, defaced, or obliterated in a bonded warehouse. Such acts constitute a felony pursuant to 18 USC §548. Furthermore, merchandise or its containers may not be marked to give it a false country of origin, description, or representation. Such acts constitute a violation of 15 USC §1124 and/or §1125. (See 19 CFR 11.13; 19 U.S.C. 1304; and 19 CFR Part 134) Although textiles and textile materials may be manipulated in a bonded warehouse, any such materials manipulated so as to circumvent any quota, visa, or export license requirement may not be withdrawn for consumption (See 19 CFR 144.38(f) and 7.3(d)(1) BWM).

6. Questions about Manipulation - Where there is doubt or a question as whether a given process is a manipulation, importers and proprietors should request an opinion or binding ruling pursuant to the provisions of 19 CFR Part 177.

(b). Application to manipulate - An application to manipulate merchandise shall be filed on CBPF 3499. The application shall describe the contemplated manipulation in sufficient detail to enable the port director to determine whether the imported merchandise is to be manipulated within the meaning of 19 USC §1562 (19 CFR 19.11(d)). The importer or transferee shall file the application with the signed concurrence of the proprietor, if a different party than the proprietor. Concurrence of the proprietor is required since the manipulation takes place at the expense of the proprietor (19 USC §1562) and pursuant to the supervision of the proprietor (19 CFR 19.4(b)(1)).

1. Sampling - The importer or transferee may, with the concurrence of the proprietor and

upon application approved by the port director on a CBPF 3499, examine, sample, repack, or transfer merchandise in the bonded warehouse, or allow prospective purchasers to examine the merchandise (19 CFR 19.8). Samples taken pursuant to the authority of this permit may be removed from the bonded warehouse without payment of duty if;

A. The value of the sample is \$25 or less;

B. The applicable duties would be \$10 or less;

C. Sampling can be done without the need to repack the merchandise;

D. The merchandise is not restricted merchandise. Otherwise, the sample may be removed pursuant to a duty-paid consumption withdrawal permit on CBPF 7501. (See Sec. 7.3 (h) BWM)

2. Blanket Application - The importer or transferee may file a blanket application to manipulate on a CBPF 3499, for a period of up to 1 year, for continuous or repetitive manipulations (19 CFR 19.11(d)). The blanket application shall cover only manipulations that are uniform throughout the period of time covered by the application. If the process is changed so that the application is no longer descriptive of the process, a new application, individual or blanket shall be filed. A blanket application may cover all bonded warehouse entries during the stated period so long as the manipulation is identical for each of the covered entries. However, the proprietor shall prepare a copy of the approved blanket application for placing in the permit file of each entry. The port director may revoke a blanket permit and require the importer or transferee to file individual applications if necessary to protect the revenue or administer U.S. laws or regulations (19 CFR 19.11(d)).

3. Action by Port Director - If the port director determines that the described process is a manipulation pursuant to Section 562 TA, the revenue will be protected, and U.S. laws and regulations will be followed; the application to manipulate will be approved. If the application is denied, the port director will state in writing to the applicant the reasons for denial. Approval or denial by the port director is the final administrative action on the application. The proprietor shall not permit any manipulation to begin until the port director has given an individual or blanket approval for the manipulation (19 CFR 19.11(c) and (d)).

(c). Supervision of Manipulation - The proprietor shall supervise manipulations in a bonded warehouse (19 CFR 19.4(b) (1)) and record the results of the manipulation in the permit file and the inventory and accounting records (19 CFR 19.12(a) (1) and (2)). The port director may physically supervise any manipulation (19 CFR 19.4(a)).

1. Recording Individual Manipulations - In the case of individual permits to manipulate, the proprietor shall record the results of the manipulation on the reverse side of the CBPF 3499, sign the document, and place it in the permit file folder. The report shall show the marks and numbers of repacked packages, the weight or gauge of bulk merchandise, and the inventory balance after manipulation.

2. Recording Blanket Manipulations - In the case of blanket manipulations, the

proprietor shall maintain a running record of manipulations, indicating quantities before and after each manipulation. The record shall show what took place at each manipulation, describing marks and numbers of packages, location within the warehouse, quantities, and description of the goods before and after each manipulation. The running record may be maintained in the proprietor's inventory and accounting records, but an individual accounting specific to each covered bonded warehouse entry shall be made and placed in the permit file folder before it is transmitted to CBP so that all manipulation information is available to properly liquidate the entry.

3. Reporting Results to Port Director - Where necessary for duty assessment or admissibility purposes (e.g., to check whether proper labels have been affixed to liquor bottles pursuant to Title 27 CFR), the port director may request from the proprietor a copy of CBPF 3499 showing the results of the manipulation recorded by the proprietor, before the permit file folder is sent to the port director.

4. Manipulation Outside Bonded Warehouse - If the port director is satisfied that the requested manipulation cannot be performed in the bonded warehouse, he or she may authorize the manipulation to be performed pursuant to CBP supervision outside the warehouse. Movement to the site of manipulation and back to the warehouse shall be authorized on a CBPF 6043. A CBPO as provided in Section 4.12(e) BWM shall supervise the manipulation. The report of the results of the manipulation by the CBPO on the reverse side of the CBPF 3499 will be transmitted to the proprietor for placement in the permit file and recordation in the proprietor's inventory and accounting record.

6.3 Destruction in Bonded Warehouse - Merchandise entered pursuant to any provision of law may be destroyed at the request and expense of the consignee within the bonded period (5 years in the case of bonded warehouses), in lieu of exportation. Upon such destruction, the entry shall be liquidated without payment of duty (19 USC §1557(c)). If duties have been paid (e.g., withdrawn for consumption but not removed from the bonded warehouse before the end of the bonded period), the duties shall be refunded (19 USC §1557(c and §1558(a)(3)). No allowance or refund of duties shall be allowed for destruction that takes place after the end of the bonded period, and therefore, no such application will be accepted by CBP. There is no authority pursuant to 19 USC §1557 for destruction of G.O. or seized merchandise, since it is not entered pursuant to bond. This section of the BWM covers only destruction after application to and permit by CBP. Destruction that takes place without application or permit, such as casualty loss, is covered in Part 8 BWM. The Customs Regulations governing destruction are found in 19 CFR Part 158, Subpart D.

(a). Application for Destruction - Application for destruction shall be made on a CBPF 3499, with the title changed to read "Application and Permit to Destroy Pursuant to Bond." The proposed method of destruction shall be stated in the application, and should be sufficient to assure that the merchandise will be completely destroyed. The application shall bear the written concurrence of the proprietor, in the case of a public warehouse (19 CFR 158.43(a) and (b)). No blanket application for destruction will be accepted by CBP. If the port director is satisfied that destruction will be complete, the method of destruction is appropriate, the revenue will be protected, and U.S. laws and regulations will be followed (including the payment of all charges

other than duty on the goods), the application will be approved. If denied, the applicant will be advised in writing of the grounds for denial. The port director's decision is the final administrative action on the application.

(b). Method of Destruction - The method of destruction shall be appropriate to the nature of the merchandise so as to assure its complete destruction and to assure that there is no recoverable residue of any commercial value. If destruction is not complete or there is recoverable residue having commercial value, the transaction will be treated as a manipulation and so recorded in the permit file and the proprietor's inventory and accounting records.

(c). Supervision of Destruction - Costs of destruction are at the risk and expense of the importer or transferee, not the proprietor. If any such costs are incurred by CBP, the importer shall reimburse them (19 CFR 113.62(g)(1)).

1. Destruction in Bonded Warehouse - Supervision of destruction is to be conducted by the proprietor. This is at the discretion of the port director. Since destruction, by its nature, leaves little or no physical evidence of the activity, CBP may choose to physically supervise many destructions, particularly destruction of prohibited merchandise. If CBP conducts physical supervision, the supervising CBPO will certify destruction on the reverse side of the CBPF 3499 and provide a copy to the proprietor for filing in the permit file folder. If the proprietor supervises destruction as part of its overall supervision responsibilities (19 CFR 19.4(b)(1)), the proprietor shall certify destruction on the reverse side of the CBPF 3499 and place the form in the permit file folder.

2. Destruction Outside the Bonded Warehouse - Merchandise may be physically removed from the bonded warehouse for destruction if the destruction cannot be effectively performed within the bonded warehouse. Destruction outside the warehouse will be supervised by CBPOs and the certified copy of the CBPF 3499 returned to the proprietor, filed in the permit file and recorded in its inventory and accounting records. Movement of the merchandise to the destruction site shall be done by a licensed cartman upon order of port director on the CBPF 6043. A CBPO will sign the CBPF 6043 upon receipt at the destruction site.

3. Destruction of Duty-Paid Merchandise - Duty-paid or unconditionally duty-free merchandise which has been withdrawn for consumption but not removed from the bonded warehouse is deemed to be no longer in CBP custody (19 CFR 19.6(b)(2)), and, therefore, not eligible for drawback upon exportation from continuous CBP custody (19 CFR Part 191, Subpart O). The port director may, at his or her discretion, allow the proprietor to supervise and certify destruction in the warehouse on the CBPF 3499, which shall be returned to the port director for the purpose of administering the refund claim.

6.4 Storage Conditions - Merchandise shall be stored in a warehouse in such a manner that the bonded warehouse will be safe for personnel working therein, the merchandise will be protected from theft or other loss, damage, and deteriorations, and compliance reviews, inventories, and audits can be efficiently conducted by CBP and bonded warehouse proprietor personnel.

(a). Safety and Sanitary 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 (19 CFR 19.4(b)(7)). Special care shall be taken to assure that merchandise subject to the laws and regulations administered by the Food and Drug Administration is not contaminated, adulterated, or infested with insects or rodents. CBPOs will not conduct compliance reviews or audits under to unsafe conditions, e.g., where there are unstable stacks of merchandise or damaged and exposed containers of hazardous substances, until the deficiency has been corrected. The port director may suspend the bonded status of the warehouse or the receipt or delivery of merchandise until such a deficiency is corrected (See Sec. 16.7 BWM). The proprietor and the port director should consult with state and local officials to ascertain or clarify local safety and sanitary requirements, such as fire codes, zoning laws, and similar provisions.

(a). Manner of Storage - Doors and entrances shall be left unblocked, to give CBPOs and bonded warehouse personnel access to the merchandise (19 CFR 19.4(b)(7)). The bonded warehouse proprietor shall present merchandise within a reasonable time after request by any CBPO (19 CFR 19.4(b)(2)). All shipments shall be marked with the warehouse entry number, G.O. number, or seizure number and their corresponding dates (19 CFR 19.4 (b)(8)). Generally, these markings shall be on all packages, but the port director may waive this requirement if the packages are marked at sufficient intervals of space to allow one lot or inventory category to be distinguished from another for the purpose of conducting a compliance review, quantity count, or audit. All containers covered by a given warehouse entry number, G.O. number, or seizure number shall be stored in one contiguous location and not mixed with merchandise covered by any other entry or lot unless the port director has given approval for an exception from the requirement, e.g., for FIFO storage per Section 6.6 BWM (19 CFR 19.12(f)). The proprietor may request such an exception on its own letterhead. The port director may approve the request if Compliance Reviews, quantity counts, and audits can be efficiently performed, the revenue is protected, and U.S. laws and regulations can be properly administered against the method the proprietor proposes for storage.

(c). Storage of Animals - Cattle and other animals from more than one warehouse entry or G.O. lot shall not be stored in the same bonded warehouse, unless they are segregated by pens or corrals, or unless they can be identified while in the bonded warehouse by brands, ear tags, or other positive means of identification with the proper entry or lot. As the weights of animals vary between entry and withdrawal, it is essential that withdrawals of specific animals be charged against the entry or lot pursuant to which they were deposited in the bonded warehouse.

(d). Separate Storage - Packages with exceptions due to damage or loss of contents or merchandise not identical as to quantity or quality shall be stored separately until the discrepancy is resolved with CBP (19 CFR 19.4(b)(8)). Any package that has a discrepancy between its contents or marks and numbers and the contents or marks and numbers shown on the entry or G.O. permit document should also be stored separately. Merchandise for which a permit for withdrawal has been issued by CBP, but has not been removed from the bonded warehouse shall be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued (19 CFR 19.6(b)(2)). Generally, G.O. status and seized merchandise (see Sec. 10.2(a) BWM) should be stored separately from merchandise entered for bonded warehouse.

(e). Bonded and Non-bonded Storage - Only bonded merchandise shall be stored in the bonded area of a bonded warehouse. The storage of non-bonded merchandise in the bonded area is in violation of Sections 555 TA and 19 CFR 113.63(a)(2). Domestic or duty-paid foreign packaging equipment, cleaning supplies, material handling equipment, and similar articles and equipment are not considered merchandise and may therefore be kept in the bonded area for the proper conduct of business by the proprietor.

6.5 Security Conditions - Bonded warehouses shall be secured so as to reduce the possibility of theft or pilferage of the merchandise, intrusion of unauthorized personnel, and inadvertent movement of merchandise from the bonded area. Theft or removal of merchandise from a bonded warehouse without a permit constitutes a felony pursuant to 18 USC §549 and §659. Concealment or removal of merchandise in a bonded warehouse may constitute a felony pursuant to 18 USC §548.

(a). Security Standards and Requirements - The proprietor shall maintain its warehouse and procedures adequate to insure security from theft and pilferage of merchandise in the bonded area. Meeting the cargo security standards and specifications of T.D. 72-56 to the extent that they do not conflict with local, state, or federal laws or regulations for safe and sanitary storage should help establish adequate security (19 CFR 19.4(b)(6)). These standards and specifications are published by CBP as “Standards for Cargo Security” and a copy is available in the BWM (Appendix B). If a portion of a warehouse 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 (See 19 CFR 19.4(b)(6) and Sec. 3.2(b) BWM). All inlets and outlets of bonded tanks shall be secured with locks or in bond seals (19 CFR 19.4(b)(6)). If the port director deems it necessary substantial fences shall enclose class 4 bonded yards (19 CFR 19.1(a)(4)).

(b). High-Security Bonded Warehouses for Certain Imported Firearms - Firearms described in Title II of the Gun Control Act of 1968 (generally, machine guns, concealable handguns, and similar devices not for sporting purposes) may be imported pursuant to a conditional permit of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) for subsequent sale to military and law enforcement agencies or other use specified in 26 USC 5844 and 5845. The procedures for obtaining such a permit are set forth in 27 CFR Parts 47, 197, and 198. The ATF will not issue a permit for storage of these firearms in a bonded warehouse or FTZ until a special survey has been conducted by CBP to determine that the warehouse meets certain standards of security that are higher than those for other bonded warehouses or ftzs. CBP will conduct such surveys only upon request from ATF. The surveying CBPO is directed to advise the proprietor of the purpose of the survey and to consult with him concerning its progress and findings. If the proprietor is able to make changes necessary to bring the warehouse into compliance with the standards within 1 month after the survey, the final report to ATF will be delayed until the changes are made and verified by the surveying CBPO.

1. Prohibition on Withdrawal for Exportation - ATF interprets the conditions for an import permit strictly, and does not authorize the exportation from a bonded warehouse of firearms imported pursuant to such a conditional permit. However, an importer may be able to

obtain an import permit into an FTZ pursuant to which exportation, as an alternative to sale to military or law enforcement agencies, would be authorized by the ATF.

(c). Employee Lists - The proprietor shall provide, within 30 days of a written demand by the port director, a list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receipt, storage, or delivery of bonded merchandise (19 CFR 19.3(d)). This listing requirement is in addition to any list required in connection with the bonded warehouse application pursuant to 19 CFR 19.2(a) and 3.4(a) BWM, Item 6. The purpose of the list requirement is to enable CBP to conduct background investigations of the persons sufficient to protect the revenue in the bonded warehouse, and is similar to employee list requirements for licensed cartmen, container freight stations, and ftzs. The list must be updated with the names and identifying information of new employees within 10 days of hiring. Officers and employees of independent contractors engaged for the purpose of loading, unloading, transporting, or otherwise handling bonded merchandise are not considered employees for the purposes of the list required from bonded warehouse proprietors.

(d). Compliance Reviews of Security - After the initial cargo security survey and follow-up conducted upon establishment of the bonded warehouse (Sec. 3.5(a) BWM), CBPOs will monitor the proprietor's maintenance of security standards, specifications, and requirements through compliance reviews (Sec. 2.3 BWM).

(e). Full Security Surveys - Full cargo security surveys may be carried out periodically by CBP in select bonded warehouses. Such a survey can usually be expected:

1. When a serious breach of security has been identified or a major theft has occurred at a bonded warehouse;
2. When the port director contemplates suspension or revocation of a bonded warehouse or the privileges of a bonded warehouse because the proprietor does not provide secured facilities or properly safeguard merchandise in the bonded warehouse (19 CFR 19.3(e)(4)) or
3. At periodic intervals in the case of warehouses for the high-security storage of Title II firearms (Sec. 6.5 (b) BWM).

(f). Action on Security Deficiencies – The port director has the discretion to decide what acceptable physical and procedural security standards should be. However, any deficiency in a requirement of the Customs Regulations constitutes a default.

1. Deficiencies in bonded warehouse security, which do not result in a loss of merchandise, are defaults not involving merchandise subject to liquidated damages of \$1,000 for each deficiency (See Sec. 15.8 BWM).
2. If merchandise is removed from a warehouse without a permit, or cannot be accounted for, through a breach or deficiency in security, the breach or deficiency will be considered a default involving merchandise and an aggravating factor in the consideration of any petition for

relief from liquidated damages (See Sec. 15.7 and 15.12(a) BWM, Item 2).

3. Action will ordinarily be taken by CBP to suspend a bonded warehouse or the bonded status of bonded warehouses, only for a major deficiency or deficiencies, pending the correction of the deficiencies. Action to revoke the bonded status will ordinarily be taken only in the case of chronic or uncorrected deficiencies that have resulted in a major loss or losses of merchandise.

6.6 FIFO Storage and Recordkeeping - First-In, First-Out (FIFO) is an inventory method based on an assumption regarding the flow of goods that older stock is disposed of first, in accordance with good merchandising policy. The FIFO inventory method is used only for fungible merchandise, i.e., merchandise which is identical and interchangeable for all commercial purposes. Use of the FIFO inventory method requires that certain conditions be met as noted in 19 CFR 19.12(f).

(a). Application for FIFO - A proprietor who wishes to use FIFO procedures for all or part of the merchandise in a bonded warehouse shall provide a written application to the port director. The application shall clearly describe the merchandise, including its commercial names and unique identifiers, to be covered by FIFO. If the bonded warehouse has been operating pursuant to the specific identification inventory method (lot system), the application shall be accompanied by a listing of each inventory category by unique identifier, with the inventory balances in the unit of quantity of each bonded warehouse entry represented therein, arranged in layers with the oldest entry first. The application shall be accompanied by a certification that:

1. the proprietor has read and understands FIFO procedures set forth in the regulations and the BWM;
2. the proprietor's procedures are in accordance with FIFO procedures, and the proprietor agrees to abide by those procedures; and
3. the proprietor of a public bonded warehouse will obtain the written consent of any importer using the bonded warehouse before applying FIFO procedures to their merchandise.

The port director may approve the application if it is complete and in proper order. Upon approval of the application, the proprietor may transfer stock into inventory categories according to this section of the BWM. The port director may later order any change(s) necessary to bring the procedures into compliance with FIFO procedures.

(b). Exclusions from FIFO - While commercial interchangeability is usually decided between buyer and seller or, in the context of bonded warehouses, between proprietor and importer, the final arbiter of fungibility in bonded warehouses is CBP. CBP has determined that the following merchandise is not fungible, hence not eligible for FIFO inventory accounting:

1. Merchandise subject to quota, visa, or export restrictions chargeable to different countries of origin;
2. Textile and textile products of different quota categories;

3. Merchandise with different tariff classifications or rates of duty, except:
 - A. Where the difference is within the merchandise itself (kits, merchandise in unusual containers, etc.); or
 - B. Where the tariff classification or dutiability is determined only by conditions upon withdrawal, e.g., withdrawal for vessel supplies, bonded wool transactions, etc.
4. Merchandise with different legal requirements for marking, labeling, or stamping;
5. Merchandise with different trademarks;
6. Merchandise of different grades or qualities;
7. Merchandise with different importers of record (but see Section 6.7 BWM);
8. Damaged or deteriorated merchandise;
9. Restricted merchandise, as defined in Customs Directive 3200-05 (alcoholic beverages are not considered restricted merchandise); and
10. G.O., abandoned, or seized merchandise.

(c). Maintenance of FIFO - When FIFO procedures are used for merchandise in any inventory category; they must be used consistently throughout the bonded warehouse storage and recordkeeping practices and procedures for the merchandise. They may not be modified by, or mixed with, any other kind of inventory method. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific bonded warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a bonded warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

1. Identity of Inventory Categories - As of the beginning date of FIFO procedures, each kind of fungible merchandise in the bonded warehouse pursuant to 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 pursuant to FIFO.

2. Segregation of Inventory Categories - All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise pursuant to other inventory categories or merchandise accounted for pursuant to other inventory methods. The unique identifier shall be marked on the merchandise, its container, or the location where it is stored to clearly show the inventory category of each article pursuant to FIFO procedures. The merchandise may be unpacked in such locations pursuant to a permit to manipulate issued as provided pursuant to 19 CFR 19.11.

3. FIFO Recordkeeping - In the inventory and accounting records required pursuant to 19 CFR 19.12(a)(1), the proprietor shall establish an inventory layer for each bonded warehouse entry represented in each inventory category. The layers shall generally be established in the order of time of acceptance of the entry, hence in the sequential order of the bonded warehouse entry number. However, when this is impractical, the port director may require or permit layers to be established in the order of date of importation. To do this, the port director must see that proprietors of public bonded warehouses are notified of the date of importation of merchandise covered by each applicable bonded warehouse entry. There shall be no mixing of layering both by time of acceptance and date of importation in the same bonded warehouse.

A. Records Requirements - Records for each layer shall show the bonded warehouse entry number, date of acceptance or importation, as applicable, quantity, and unit of quantity. They shall also show for each entry the type of bonded warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category shall be posted in the appropriate inventory category within 5 business days after the addition or deduction event occurs. The proprietor shall maintain a correct record balance for each inventory category.

1. Unit of Quantity - The unit of quantity used in FIFO procedures (e.g., barrels, gallons, pounds, and pieces) shall be determined by the proprietor or jointly by the proprietor and the importer. All FIFO records and all documentation used in FIFO procedures shall consistently use the same unit of quantity in each inventory category. The unit of quantity may be changed through a permit to manipulate on a CBPF 3499 or through a written request to the port director by the proprietor countersigned, where applicable, by the importer.

2. Entries and Additions into FIFO Inventory - Bonded warehouse entries covering any merchandise to be accounted for pursuant to FIFO must be prominently marked "FIFO" on the face of the entry document. The entry document or an attachment thereto shall show the following information:

- A. unique identifier of each inventory category to be accounted for pursuant to FIFO;
- B. quantity in each inventory category; and
- C. unit of quantity.

1. Supervision of Receipts - The proprietor shall supervise all receipts for placing into FIFO inventory, as provided in 19 CFR 19.4(b)(1). Any shortages, overages, or damage found upon receipt shall be attributed to the entry pursuant to which the merchandise was received, and documentation therefore placed in the corresponding permit file folder. FIFO procedures will not take effect until the merchandise is placed in inventory, i.e., when the merchandise is physically placed in the storage location for the inventory category(ies) represented in the entry.

2. Withdrawals and Deductions from FIFO Inventory - As merchandise is removed from FIFO inventory by withdrawals, loss, or other means, the quantity so removed shall be

deducted from the balance of each inventory category in the order of the oldest warehouse entry first. Merchandise shall be deducted from a FIFO inventory when the merchandise is no longer held under the custodial bond of the proprietor. Merchandise covered by a warehouse withdrawal shall be segregated or physically marked as specified in 19 CFR 19.6(b)(2). The warehouse entry against which a withdrawal is filed on a FIFO basis will be the entry used for all appraisement, classification, statistical reporting, and other CBP administrative purposes.

3. Statement of Quantity - The importer of record shall provide the statement of quantity specified in 19 CFR 144.32(a) by unique identifier, from the inventory layer representing the oldest bonded warehouse entry in the inventory category. If an entry covers more than one inventory category, the statement on the withdrawal shall show the sum totals for all categories in the entry. When necessary, bonded warehouse proprietors shall assist importers by informing them of the oldest entry and the quantity balance within that entry, so they can properly provide the required statement of quantity.

4. Number of Entries Withdrawn From - A withdrawal shall cover only the merchandise included in one warehouse entry, except:

A. withdrawals made pursuant to blanket permits to withdraw, characterized by many small quantity withdrawals, as provided in Sec. 7.9 BWM; and

B. withdrawals of products manufactured, smelted, refined or manipulated from merchandise included in 2 or more warehouse entries. Example: imported cameras packed in imported cases with imported instruction booklets, all covered by separate entries.

In the case of such exceptions, the withdrawal shall include the statement of quantity required pursuant to 19 CFR 144.32 for all warehouse entries represented in the withdrawal.

1. Maintenance of Permit File Folders - Permits for withdrawal and other records of removal from inventory (loss claims, penalty notices, etc.) shall be identified with the oldest entry first and placed in the appropriate permit file folder. When all of the merchandise in an entry has been deducted on a FIFO basis, the file folder shall be reviewed by the proprietor and sent to CBP as provided in 19 CFR 19.12(d)(4).

2. Merchandise Remaining in Bonded Warehouse After 5 Years - When merchandise in any inventory category remains in a bonded warehouse more than 5 years after the date of importation, it is deemed abandoned to the government and no longer subject to FIFO procedures. The quantity of merchandise represented in the balance of any such entry shall be segregated from other FIFO merchandise for placing pursuant to the specific identification inventory method, and the FIFO inventory category balance(s) shall be adjusted accordingly. The permit file folder shall be sent to CBP as provided in 19 CFR 19.12(d)(4).

(a). Special Instructions - If it becomes apparent to the port director that merchandise agreed to be considered fungible is not actually so treated (e.g., the importer selects certain merchandise in an inventory for withdrawal on the basis of its quality, marking, or other

identifiable physical characteristic), the port director shall order the merchandise segregated into, and accounted for pursuant to, separate inventory categories, or accounted for pursuant to another inventory method. Any decision as to whether fungible merchandise is commingled pursuant to General Note 12(g), HTS, shall be made by CBP.

1. Shortages, Overages, and Damage - Shortages found after the merchandise has been placed in inventory shall be accounted for on a FIFO basis with respect to the basic importation and entry bond. Also, shortages shall be charged against the custodial bond of the proprietor. When overages are found after the merchandise has been placed in inventory, the quantity so identified shall be sent to G.O., unless an entry is filed within 5 working days plus any extension thereto granted by the port director. Merchandise found to be damaged or deteriorated after it was placed in inventory shall be considered not fungible, and be segregated and accounted for pursuant to the specific identification inventory method, after deduction from the appropriate inventory category on a FIFO basis.

2. Destruction and Abandonment - Merchandise which is to be destroyed pursuant to CBP permit or order, or has been abandoned after it was placed in inventory, shall be accounted for on a FIFO basis, unless it consists of damaged or deteriorated merchandise treated as not fungible.

3. Grade and Quality – A determination whether merchandise is of the same grade or quality is generally made by the proprietor or jointly by the proprietor and the importer. However, the port director may deny an application for FIFO procedures, or an entry into FIFO, or may require segregation into different inventory categories, in the case of any merchandise he deems, based on information provided by the trade, as being of a different grade or quality, hence not fungible.

4. Marking and Labeling - Merchandise with different legal or regulatory requirements for marking or labeling, or merchandise with different trademarks, is not fungible. Merchandise with other markings (serial numbers, part numbers, manufacturers' plates, etc.) may be considered fungible so long as the proprietor, or proprietor and importer, actually treat them as fungible. If merchandise is withdrawn by serial number, e.g., firearms, it is not fungible.

5. Declaration of Owner and Superseding Bond; Transfer of Right to Withdraw - Merchandise with different importers of record is not fungible as specified in Item 1 of Section 6.6(a) BWM. Therefore, a declaration of the owner and superseding bond shall not be accepted pursuant to 19 CFR 141.20 for merchandise subject to FIFO. Also, a transfer of the right to withdraw pursuant to 19 CFR Part 144, Subpart C, will not be accepted for merchandise subject to FIFO, unless the transfer takes place only upon withdrawal. The proprietor may discontinue FIFO procedures for the affected merchandise as provided in Section 6.6(e) BWM to carry out such actions.

6. Manipulation - When a manipulation results in a product with a different unique identifier, the inventory and accounting records shall show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. This would occur, for example, when imported cameras are placed in imported camera cases, and the

cameras so packed have a new unique identifier. The withdrawal shall show the unique identifiers of both the materials used in the manipulation and of the product as manipulated. The quantities of the original unique identifiers shall be deducted from their respective bonded warehouse entries on a FIFO basis when the resultant product is withdrawn.

(e). Discontinuance of FIFO - A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently subject to FIFO by written application to the port director. The application shall clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. The port director may approve the application if it is complete, in proper order, and is in compliance with this section of the BWM. Upon approval, the warehouse entry number as determined on a FIFO basis shall segregate the merchandise in both the recordkeeping system and the physical location, and the quantities so removed shall be deducted from the appropriate FIFO inventory category balances. Merchandise so removed shall be maintained pursuant to the specific identification inventory method unless the port director approves another inventory method. FIFO procedures that were voluntarily discontinued may be reinstated through the procedure in Section 6.6(b) BWM, but not for merchandise covered by any warehouse entry for which FIFO was discontinued. This is to prevent manipulation of the inventory and recordkeeping systems so as to circumvent FIFO requirements.

(f). Correction of FIFO Deficiencies - If a proprietor fails to properly maintain FIFO procedures, the port director will issue an order to take the corrective action(s) needed to bring the inventory into compliance. If the proprietor is in default of any provision of its custodial bond, liquidated damages will also be assessed as appropriate. If the proprietor fails to comply with the order, the port director will initiate action to suspend the bonded status of the bonded warehouse, or suspend permits to enter, withdraw, or manipulate all or part of the merchandise in the bonded warehouse (see Secs. 16.7 - 16.9 BWM) pursuant to 19 CFR 19.3(e) (2) and (f) until proper FIFO procedures are reestablished or procedures for specific identification or another approved inventory method are established.

6.7. FIFO By Issues for Bonded Jet Fuel - The port director may authorize use of the FIFO by Issues inventory method for bonded jet fuel, recognizing the existence of that method in the trade. This allows the mixing within the same tank or group of tanks of fungible bonded fuel owned by different importers, which is not allowed pursuant to standard FIFO procedures as noted in Item 7 of Section 6.6(a) BWM. Pursuant to this method, withdrawals are attributed to the oldest entry of the same withdrawer, and duty liability for shortages and overages is prorated among importers using the same tank or tanks.

(a). Application for FIFO by Issues - The proprietor of a bonded tank may file a written application to the port director for a permit to use the FIFO by Issues inventory method. The application may cover more than one bonded tank in the same Class 4 bonded warehouse location. The application must specify which tank (or tanks) is covered by the application, and must be accompanied by a copy of:

1. A pre-existing agreement, commonly known as a throughput agreement, between the proprietor and two or more importers of bonded jet fuel for the receipt, handling, storage, and

removal of fuel in the tank. The agreement must provide for a quantity reconciliation by the proprietor not less often than monthly, and the sharing of responsibility for overages and shortages in the tank on a FIFO By Issues basis; and

2. An agreement jointly by the proprietor and the importers with CBP to follow the provisions of this section, not use CBP failure to determine ownership of the fuel as a defense against liquidated damages, and exonerate the United States for any risk, loss, or expense arising from the use of the FIFO By Issues method. The text of the agreement is shown in Attachment I.

Authorized representatives of the proprietor and each of the importers of record of bonded fuel in the tank or tanks shall sign the foregoing agreements.

The port director will approve the application if it is in complete and proper form and the port director is satisfied that the revenue will be protected and all applicable laws and regulations can be properly administered.

(b). Changes to Application - The proprietor may make written application for a change in the original application because of the addition of new parties, the deletion of parties to not fewer than two importers, or a change in the tanks where FIFO by Issues is to be permitted. The application must be supported by new copies of the agreements noted in Section 6.7(a) BWM signed by all of the parties to the agreements as adjusted by the change. The agreement may be terminated in writing by the proprietor if all of the tanks are empty or contain the fuel of only one importer.

(c). Maintenance of FIFO By Issues - Upon approval of the application, the port director may authorize the storage and mixing of fungible imported jet fuel of different importers in the same bonded tank or group of tanks covered by the application. Pursuant to the FIFO by Issues method, withdrawals and certificates of use pursuant to 19 CFR 10.59 through 10.64 is attributed to the oldest entry of the same withdrawer. The proprietor shall maintain the record balance of each importer covered by the agreement and inform each importer of its current record balance. No withdrawal will be made, or accepted by CBP, for a larger quantity than the record balance of that importer in the tank or tanks. The right to withdraw may be transferred to any other importer covered by the same agreement. Warehouse entries for bonded fuel to be accounted for pursuant to this method must be prominently marked "FIFO by Issues" on the face of the entry document. FIFO procedures specified in Section 6.6 BWM shall be used for this merchandise, except as otherwise specified in this section.

(d). Treatment of Shortages and Overages - Any shortages or overages found by the proprietor, importer, or CBP in a bonded tank will be treated as provided in this subsection.

1. Report to CBP - The proprietor will report to CBP any theft or suspected theft, overage, or extraordinary shortage or damage, as required by 19 CFR 19.12(a)(3) and 8.4(a) BWM. Accompanying the report will be a calculation of the share of each importer's duty responsibility for the discrepancy, according to the proportion that deliveries of each importer of that fungible fuel to aircraft (whether or not the aircraft is eligible for duty-free fuel use pursuant to Section 309 TA) during the 30 calendar days preceding discovery of the discrepancy bears to the total of

all deliveries of the same fungible fuel by all importers represented in the agreement during the same 30 days.

Example:

Shortage found in bonded tank - 1,000 gallons

Deliveries of bonded fuel to aircraft during preceding 30 calendar days:

Importer A	- 6,000 gallons	- 15.0%
Importer B	- 19,000 gallons	- 47.5%
Importer C	- 15,000 gallons	- 37.5%
Total	40,000 gallons	- 100.0%

Duty Liability:

Importer A	- 1,000 gallons X 15.0%	= 150 gallons
Importer B	- 1,000 gallons X 47.5%	= 475 gallons
Importer C	- 1,000 gallons X 37.5%	= 375 gallons

1. Report to Importers - The proprietor will send a copy of the report to each importer covered by the agreement. If the discrepancy is an overage, theft, suspected theft, or extraordinary shortage, each importer will present a bonded warehouse entry on a CBPF 7501. If the CBPF 7501 is not received from all importers covered by the agreement within 5 working days after discovery of the discrepancy, the port director will issue a claim for liquidated damages against the proprietor covering the quantity for which the form has not been filed. If the proprietor petitions for relief from liquidated damages, the claim will be processed pursuant to the guidelines and instructions of Sections 15.10 through 15.13 BWM.

2. CBP Discovery of Discrepancy - If a theft, suspected theft, or extraordinary shortage is discovered by CBP during the course of a Compliance Review, audit, or other official visit, CBP will issue a claim for liquidated damages against the proprietor. The proprietor will provide the report specified in Section 6.7(d)(1) BWM to each of the importers so they can file the appropriate form to satisfy their duty liability. The failure or inability of CBP to determine the ownership of specific quantities of fungible jet fuel will not be raised by any of the parties to the agreement as a defense in any liquidated damages claim against the proprietor.

3. Non-extraordinary Shortages - If the proprietor or CBP discovers a non-extraordinary shortage, it will be treated according to the procedures of Section 8.4(b) BWM. Each importer's share of the discrepancy will be documented in its corresponding permit file folder as determined by the FIFO by Issues method. The proprietor will notify each importer of its share of duty liability so it has the option of filing a withdrawal for consumption to immediately cover its duty liability, consistent with Section 8.4(b) BWM.

(e). Termination of FIFO by Issues by CBP - The port director may order any change by the proprietor or importers in their procedures necessary for compliance with this section. If the order is not followed or there is chronic failure to follow the requirements of this section, the port director may initiate action to suspend or revoke permits (including the permit to use the FIFO By Issues method) or the bonded status of the bonded warehouse as provided in 19 CFR 19.3(e)

and (f) and 16.7 through 16.11 BWM.

PART 7 - WITHDRAWAL AND REMOVAL FROM BONDED WAREHOUSE

7.1 General – A warehouse entry may be made on any merchandise stored in a bonded warehouse within 5 years from the date of importation, for consumption, exportation, transportation and exportation, shipment to a U.S. insular possession, transportation to another port or elsewhere for re-warehousing, or transfer to another bonded warehouse in the same port, provided that the total period of time the merchandise may remain in a bonded warehouse shall not exceed 5 years from the date of importation (19 USC §1557(a)). Part 7 covers procedures for the withdrawal of merchandise from the bonded warehouse and its subsequent removal. It does not cover the removal of G.O., abandoned, or seized merchandise (Part 10 BWM). The regulations for withdrawals are found in 19 CFR Part 144, except for withdrawals for aircraft or vessel supplies, (see 19 CFR 10.59 through 10.65), and international travel merchandise.

7.2 General Procedure for Withdrawals – This section covers procedures that are common to all kinds of warehouse withdrawals. No merchandise entered into a bonded warehouse shall be removed without a permit issued by the port director on the appropriate withdrawal form. The port director will review all withdrawals, or blanket permits to withdraw, to determine whether the permit may be issued.

(a). Right to Withdraw - The right to withdraw merchandise from a bonded warehouse is similar in nature to the right to make entry. The right to withdraw merchandise is granted, generally, only to the party listed as importer of record on the warehouse entry summary. The importer of record can only be the owner or purchaser of the goods, or when designated by the owner, purchaser, or consignee, a duly licensed Customs broker with power of attorney (19 CFR 144.31). 19 USC §§1552, 1553 does not give carriers the right to withdraw merchandise from bonded warehouses.

1. Exceptions – There are two exceptions to the above limit on the right to withdraw. These are:

A. The actual owner of the goods has the right to withdraw, if a declaration of actual owner is filed and supported by a superseding bond in accordance with 19 CFR 141.20.

B. A transferee has the right to withdraw, if the right to withdraw the merchandise has been properly transferred in accordance with 19 USC §1557(b) and 19 CFR Part 144, Subpart C.

(b). Transfer of Right to Withdraw - The importer of record may transfer the right to withdraw all or part of the merchandise on a warehouse entry summary to any party he so designates (19 USC §1557(b)). To do so, he shall provide a statement endorsing the transfer of the right to withdraw on the appropriate withdrawal form, listing the name of the transferee (19 CFR 144.22). The transferee so designated, must produce a bond on the CBPF 301, containing the bond conditions set forth in 19 CFR 113.62 before he can be authorized to make a withdrawal (19 CFR 144.24).

1. Authorization in Blank - The transferee may also prepare a blank authorization

transferring the right to withdraw all or part of the merchandise. Again, the statement transferring the right to withdraw would be provided on the withdrawal form but the name of the transferee would be left blank, to be filled in subsequently before presentation of the withdrawal. Whoever would be named transferee must still provide a bond as noted above before a permit to withdraw may be issued (19 CFR 144.23).

2. Blanket Transfer of Right - The port director may accept a written blanket statement, signed by the importer of record on its own letterhead, transferring the right to withdraw, naming the transferee and listing the specific warehouse entries and merchandise covered therein to which the transfer applies. The transferee must produce a bond on the CBPF 301, containing the bond conditions set forth in 19 CFR 113.62 before he can be authorized to make a withdrawal pursuant to the blanket transfer.

3. Re-Warehouse Entry - The port director may demand a rewarehouse entry on the CBPF 7501, Entry Type 22, for any transfer of the right to withdraw, whenever he determines it is necessary for proper control of the merchandise.

4. Effect of Transfer - The transfer of the right to withdraw, in any of the above forms, may be presented to the port director by either the transferor or transferee (19 CFR 144.25). The right to withdraw may not be revoked by the transferor, but may be retransferred by the transferee (19 CFR 144.26). The transferee becomes then liable for all duties, taxes, and charges due on merchandise he withdraws, and eligible for any refunds of moneys paid by him. Also, he may protest any action pursuant to Section 514 TA taken against merchandise he was responsible for (i.e., merchandise for which the right to withdraw was transferred). The transferor is relieved of all obligations assumed by the transferee (19 USC §1557(b)).

5. Proprietor's Responsibility - When the right to withdraw a portion of the merchandise on a warehouse entry remaining in the bonded warehouse is transferred, the proprietor shall maintain, either in its inventory and accounting records (19 CFR 19.12(a)(1)), or through a sub account in the permit file or a separate permit file (19 CFR 19.12(d)(4)), the inventory balance of the merchandise in the bonded warehouse for the importer of record and each transferee. (See Sec. 7.2(c) BWM). However, if the right to withdraw is transferred only in the withdrawal document, the proprietor need not maintain a separate account. Otherwise, a copy of the transfer of the right to withdraw shall be placed in the permit file folder for each affected entry. The port director will furnish a copy of the statement of transfer of the right to withdraw to the proprietor, so the separate accounting may be initiated.

6. Transfer of Right to Withdraw Not Necessary - When the person with the right to make entry or a transferee of such right makes a withdrawal, he is primarily liable for the payment of duties on the merchandise being withdrawn.

(c). Statement of Quantity - Each withdrawal form shall include, in the lower left margin or elsewhere in the form, a summary statement of quantities, indicating: (1) the quantity in the bonded warehouse account before withdrawal, (2) the quantity being withdrawn, and (3) the quantity remaining in the bonded warehouse after the withdrawal. The quantity in each instance may cover a group of varied units of quantity such as boxes, cases, and cartons, and may cover

more than one kind of merchandise (19 CFR 144.32(a)).

1. Transfer of Right to Withdraw - When the right to withdraw all or a portion of the original lot has been transferred, each withdrawal by the transferee shall show only the quantity on hand in the transferee's name, the quantity being withdrawn by the transferee, and the transferred quantity remaining in the bonded warehouse. The quantity retained by the importer of record and the quantity remaining in the bonded warehouse transferred to each transferee shall be treated as separate accounts (19 CFR 144.32(b)).

2. Special Considerations - The statement of quantity is applicable to blanket permits to withdraw and withdrawals made pursuant to Section 7.9(e)(1) BWM. The statement of quantity applicable to withdrawals from FIFO inventories is provided for in Section 6.6(c)(8) BWM.

(d). Charges and Liens - Upon receipt of an application to withdraw merchandise, the appropriate CBPO will determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by the carrier (19 CFR 144.32(c) and see 19 CFR 141.112).

(e). Statistical Information - The Customs Regulations state that each withdrawal form is to contain the statistical information provided for in 19 CFR 141.61(e) (See 19 CFR 10.60(a), 141.61(e)(1)(A), 144.36(d)(7), 144.37(a), 144.38(a), 144.41(b), and 144.42(b)(1)). However, statistical information need be included on the form only in the case of (1) withdrawals for consumption and (2) other withdrawals of merchandise that was imported by vessel. The person filing the withdrawal is responsible for providing the statistical information in a timely manner (19 CFR 141.61(e)(2)). The form may be rejected if the statistical information is missing or clearly erroneous (19 CFR 141.61(e)(4)).

(f). Bond Requirement - The entry bond on the CBPF 301 containing the conditions of 19 CFR 113.62, secures the responsibilities of the withdrawer, and no additional bond is required of the withdrawer, if it is the same party as the importer of record (See Sec. 4.7 BWM). If the right to withdraw has been transferred, a new bond will be required of the transferee (Sec. 7.2(b) BWM). Except in the case of withdrawals for consumption, delivery may be authorized only to those carriers and licensed cartmen which are bonded or licensed pursuant to the provisions of 19 CFR Part 112.

(g). Minimum Quantities - Except with the permission of the Commissioner, merchandise shall not be withdrawn from a bonded warehouse in quantities less than an entire bale, cask, box, or other package or, if in bulk, in quantities less than 1 ton or the entire quantity imported (19 CFR 144.33).

(h). Place of Filing Withdrawal - CBP will not accept a warehouse withdrawal or its supporting documentation at any location outside a port of entry. In the case of bonded warehouses that are located outside a port, the documentation must be delivered to CBP within the limits of the port having responsibility for supervision of the bonded warehouse (See Secs. 4.6, 4.10(b), and 7.3(c) BWM).

(i). Administrative Requirements - All withdrawal forms shall be filled out completely, accurately, and legibly. All signatures required on the form and supporting documents shall be valid signatures. All supporting documentation shall be filed with the withdrawal, except to the extent bond may be accepted by CBP for missing documents pursuant to 19 CFR 141.66. Permits will not be given for the withdrawal or for removal of merchandise from the bonded warehouse unless and until all administrative requirements are met.

(j). Penalties for False or Inaccurate Information - If the information contained in any bonded warehouse withdrawal document is not true or accurate, the importer, transferee, or other withdrawer may be subject to civil penalties pursuant to 19 USC §1592 for fraudulent, grossly negligent, or negligent acts or omissions in connection with the withdrawal or the bonded warehouse entry. In addition, the withdrawer may be subject to fine or imprisonment pursuant to 18 USC §§541, 542, or 543 (see Sec. 4.4 BWM) or other provisions of Title 18 USC.

7.3 Withdrawal for Consumption - Merchandise entered into a bonded warehouse may be withdrawn for consumption upon payment of the duties and charges occurring thereon at the rate of duty imposed by law on such merchandise on the date of withdrawal (19 USC §1557(a)). Merchandise that is unconditionally free of duty may be withdrawn for consumption without payment of duties since none are due the Government. Merchandise, which has been manipulated, will be treated in its condition, weight, and adjusted value upon withdrawal for consumption (19 USC §1562).

(a). Filing of Withdrawal - The withdrawal for consumption shall be presented on a CBPF 7501 in quadruplicate (importer's copy, statistical copy, permit copy, and cashier copy). The port director may require or accept additional copies of the form where needed for local control purposes. The CBPF 7501 shall be presented at the appropriate CBP office within the port of entry having responsibility for supervision of the bonded warehouse, accompanied by an estimated duty payment (where applicable). Some ports allow the filer to authorize the release and the withdrawal is not presented to CBP for processing, but in a paperless format. Information on consumption withdrawal forms must be provided according to the requirements of the Harmonized Tariff Schedule.

(b). Release for Immediate Delivery - Merchandise may be released from a bonded warehouse pursuant to a special permit for immediate delivery (19 CFR 142.21(f)). The merchandise may be so released at the discretion of the port director when the bonded warehouse is located at a considerable distance from the customhouse and actual release of the merchandise from the bonded warehouse may not be affected within the next full business day after the day of the payment of duty, and sufficient manpower exists to permit the practice. The importer shall have on file a bond or a CBPF 301, containing the conditions set forth in 19 CFR 113.62. The immediate delivery permit shall be annotated to state that a bonded warehouse withdrawal for consumption will be filed for the merchandise. CBP policy is not to accept immediate delivery documentation outside a port of entry except in unusual circumstances, per Section 7.3(a) BWM.

(c). Examination - The port director may order a CBP examination of merchandise to be withdrawn for consumption, as a condition of its release from CBP custody. Such an examination will take place only within the limits of the CBP port which has responsibility for

supervision of the warehouse, except pursuant to the unusual conditions specified in Section 4.10(b) BWM.

(d). Admissibility - A determination will be made by CBP as to the admissibility of the merchandise into the U.S. commerce, particularly in the case of restricted merchandise subject to special permits issued by CBP or other agencies. Withdrawals of quota merchandise will be processed pursuant to the procedures set forth in 19 CFR Part 132.

1. Textile Articles - Textile and textile products subject to quota, visa, or export license requirements in their condition at the time of importation may not be withdrawn for consumption if, during the warehouse period, there has been a change by manipulation or other means in their country of origin, quota or visa or export license eligibility, or textile category (19 CFR 144.38(f)).

(e). Payment of Duty and Permit - After payment of applicable duties and taxes has been received by the cashier, the authorized CBPO will sign and date the permit copy (CBPF 7501) and return it to the withdrawer for delivery to the proprietor as the permit to release the merchandise from the warehouse.

(f). Overpayment of Duty - An importer or transferee may also file a claim, prior to the liquidation of an entry summary, for an administrative refund of duties and/or taxes paid by reason of clerical error (19 USC §1520(a)(4)).

(g). Classification and Appraisal - Regardless of the rate of duty shown on the warehouse entry summary, the rate of duty to be assessed is the rate in effect at the time of withdrawal, i.e., the time of presentation of the withdrawal for consumption with duty payment attached. Furthermore, the tariff classification, rate of duty, quantity, or appraised value may be changed through manipulation or condition of entirety.

(h). Withdrawal of Samples - A withdrawal for consumption shall be filed for samples which are ineligible for taking pursuant to a permit on a CBPF 3499 (See Sec. 6.2(b)(1) BWM). Also, a withdrawal for consumption shall be filed for payment of IRS tax on any sample of beer in excess of 8 ounces, wine in excess of 4 ounces, or distilled spirits in excess of 2 ounces taken for the purposes of soliciting orders or products of foreign countries (27 CFR 251.49).

(i). Withdrawal Pursuant to Temporary Importation Bond (TIB) - Merchandise entered into a warehouse may not be withdrawn for entry pursuant to TIB. However, if merchandise has been entered into a warehouse and it is subsequently desired to make a TIB entry of all or part of the warehouse entry, the entry may be amended to a TIB entry within 1 year from the date of importation as provided for in 19 CFR 10.31(g).

7.4. Withdrawal for Diplomatic Use - Withdrawals for diplomatic use are, for CBP purposes, withdrawals for consumption but with special control requirements of the warehouse proprietor. Merchandise may be withdrawn from a bonded warehouse without the payment of duty and tax for the personal use of diplomatic, consular, and other privileged personnel, but not as an accommodation for others or for sale or other commercial use, upon the request of the

Department of State and upon appropriate instructions CBP in each instance (19 CFR 148.85).

(a). Regulatory Provisions for Exemption from Duties and Taxes - The definitions of diplomatic, consular, and other privileged personnel are set forth in 19 CFR 148.85(a) through (c). In addition, 19 CFR 148.87 identifies public international organizations whose officers and employees, and representatives to, are entitled to such free entry privileges. 19 CFR 148.88 specifies certain representatives to, and officers of, the United Nations and the Organization of American States entitled to the same privileges (PL 357, Vienna Convention for Consular Affairs, Vienna Convention for Diplomatic Affairs). Property of designated international organizations listed in 19 CFR 148.87 or of foreign governments will be admitted free of duty and IRS taxes imposed upon or by reason of importation pursuant to 22 USC 288a(d), but such exemption will be granted only upon the receipt, in each instance, of instructions from CBP issued at the request of the Department of State (PL 291). Foreign military personnel are entitled to exemption from duty pursuant to 19 CFR 148.90.

(b). Procedures for Diplomatic Exemptions - Permission for a withdrawal for diplomatic, consular, or public international organization use are requested by a representative of such an entity from the Department of State on DS Form 1504. If the Department of State finds that U.S. personnel in those countries are offered reciprocal privileges and approval of the request is otherwise warranted, it will so advise CBP. The State Department will issue to both the withdrawer and the appropriate port director an authorizing letter specifying the appropriate HTS Subheading (Chapter 98, Subchapter VI or IX, HTS) or other provision pursuant to which the merchandise is entitled to withdrawal free of duties and taxes. Each CBP port shall conduct on a periodic basis a records review of the bonded warehouse to ensure that merchandise is properly withdrawn via a DS 1504 to eligible personnel approved by the U.S. State Department, Office of Foreign Missions, Diplomatic Tax and CBPF Branch, 3507 International Place, NW, Washington, D.C. 20008-3034.

(c). Procedure for Military Exemptions - A request for exemption from duties and taxes on merchandise withdrawn for the official or personal use of members of the armed forces of any foreign country in the United States, but not as an accommodation to others or for sale or other commercial use, shall be made, not through the State Department, but directly to the port director having jurisdiction over the warehouse (19 CFR 148.90(a)). The port director will accord duty and tax-free treatment only to the extent to which the foreign government accords similar treatment to members of U.S. armed forces in that country (19 CFR 148.90(b)). The withdrawal of alcoholic beverages for the personal or family use of foreign military personnel is limited to one case per month, except in exceptional circumstances (19 CFR 148.90(d)).

(d). Permit File Records - Withdrawals pursuant to this section shall be made on a CBPF 7501, accompanied by a certified copy of a DS Form 1504. The proprietor shall place the permit copy of the withdrawal (CBPF 7501) and the foregoing support documents in the permit file folder. However, the proprietor shall retain a copy of all records pertaining to the withdrawal of alcoholic beverages by foreign military personnel for 3 years after the date of the warehouse entry (19 CFR 148.90(d)(3)).

(e). Transfer to Other Ports after Withdrawal - A withdrawal made pursuant to this

section may be made at a port other than the one where the embassy, consulate, public international organization, or foreign military unit is located. Merchandise that has been withdrawn for such diplomatic use may be transported (but not pursuant to CBP bond, since it has been withdrawn for consumption) to the location where it will be used for diplomatic purposes.

7.5 Transfer to Another Warehouse - Merchandise may be transferred from one bonded warehouse to another warehouse at the same or a different port (19 USC §1557(a)).

(a). Transfer in Same Port - With the concurrence of the delivering and receiving proprietors, merchandise may be transferred by a licensed cartman to another warehouse in the same port. Such a transfer shall be requested in writing by the importer or transferee, bearing the written concurrence of the proprietors, and shall be performed at the importer or transferee's expense. The transfer will be ordered by the port director on a CBPF 6043 pursuant to the procedures in 19 CFR Part 125, Subpart D. However, the port director may require the filing of a rewarehouse entry if he determines that it is necessary for proper control of the merchandise. The port director will require a re-warehouse entry when there is a transfer of the right to withdraw concurrent with the transfer to another warehouse. If the transfer is from a Class 1 warehouse, all charges due the government shall be paid before the port director orders the transfer (19 CFR 144.34(a)). The liability of the delivering proprietor for the merchandise will be relieved as provided in 19 CFR 19.6(b)(1), and the liability of the receiving proprietor will be assumed as provided in 19 CFR 19.6(a)(1).

(b). Transfer at Another Port - Transfer to a warehouse pursuant to the jurisdiction of another port shall be made by withdrawal of the merchandise for transportation at the origin port and a subsequent rewarehouse entry at the destination port, on a CBPF 7512. All charges due the government shall be paid before permit to withdraw is given at the origin port (19 CFR 144.34(b) and see Sec. 7.6 BWM).

(c). Liability and Payment of IRS Tax - In the case of any alcohol or tobacco product imported, entered for warehouse, or brought into the United States or an FTZ, the IRS tax, but not the duty becomes due and payable within 14 days after removal from the first bonded warehouse into which it is entered (26 USC §5061(d) and §5703(b)(2)). For the purposes of this law, FTZs are treated as if they were bonded warehouses.

1. Exception for Export Merchandise - IRS tax is not due or payable on any alcohol or tobacco product that the port director is satisfied is destined for export. The burden of proof for furnishing evidence of export destiny lies with the withdrawer. Acceptable evidence includes withdrawal for exportation or transportation and exportation, or transfer to a duty-free store, Class 6 warehouse, or an FTZ in zone-restricted status. The withdrawal or transfer document shall include the following statement: "THIS MERCHANDISE IS DESTINED ONLY FOR EXPORTATION, AND IS NOT TO BE WITHDRAWN OR DIVERTED FOR CONSUMPTION."

2. Payment Procedure - When alcohol or tobacco products are to be removed for transfer to another warehouse or withdrawn for transportation to another port, and are not destined for

export, the application for transfer or the withdrawal on a CBPF 7512 shall be accompanied by a CBPF 7501, in the number of copies required by the port director, as a collection document. The following statement shall be contained in the body of the form: "FOR COLLECTION OF INTERNAL REVENUE TAXES ONLY." A receipted copy of the CBPF 7501 should accompany the merchandise to the destination port or warehouse as evidence of proof of IRS tax-paid status. The burden will be on the subsequent withdrawer to provide satisfactory evidence to CBP of tax-paid status.

7.6 Withdrawal for Transportation - Merchandise entered for warehouse may be withdrawn for transportation in bond to another port and (1) re-warehousing at that port, or elsewhere, (2) exportation, or (3) shipment to a U.S. insular possession, without the payment of duty (19 USC §1557). In addition to the general provisions applicable to withdrawals pursuant to Section 7.2 BWM, the provisions of this section shall be followed for withdrawals for transportation.

(a). Time Limit - Merchandise may be withdrawn from a warehouse for transportation to another port of entry if a withdrawal for consumption or for exportation can be accomplished at the port of destination before the expiration of the 5 year warehousing period (19 CFR 144.36(a)).

(b). Physical Deposit Not Needed - All or any part of the merchandise covered by an entry summary (CBPF 7501) may be withdrawn for transportation without deposit in a bonded warehouse and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive warehouse status pending examination (See Sec. 4.12(b) BWM). When any such merchandise not deposited in a warehouse is not forwarded pursuant to the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent and, upon failure to do so, it shall be treated as unclaimed (19 CFR 144.36(b)).

(c). Withdrawal Procedure - A withdrawal for transportation shall be filed on a CBPF 7512, in five copies. An extra copy or copies of the CBPF 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies will be required for use in furnishing the duty statement to the port director at destination (19 CFR 144.36(c)). One copy of the CBPF 7512 will be used by the port director to initiate the in-bond movement control pursuant to the Automated Commercial System. One copy shall be used as the permit copy of the proprietor. The other copies shall be returned to the withdrawer for transmittal to the bonded carrier. The documentation procedures of Section 7.5(c) BWM will be followed in respect to the withdrawal for transportation of certain alcohol and tobacco products. (See Sec. 7.7(g) BWM concerning the withdrawal for transportation of merchandise bought and sold by weight, gauge, or measure.)

(d). Information Required For the CBP Form 7512 - In addition to the statement of quantity and statistical information required pursuant to Section 7.2 BWM, the CBPF 7512 shall show the following information for the merchandise being withdrawn: (19 CFR 144.36(d));

1. The original entry number, date of entry, date of entry summary, and port at which filed;
2. The name of the consignee at the port of destination;
3. Any ascertained weight, gauge, or measure;
4. The entered value of the merchandise;
5. Estimated duties, if any;
6. A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable;
7. The statistical information required by 19 CFR 141.61(e). When the withdrawal is made after the merchandise has been re-warehoused, the re-warehouse entry number, date, and port at which filed also shall be shown.

(e). Duty on Samples - The duty on any dutiable samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and notation thereof made on a withdrawal form (See Sec. 7.3(h) BWM). No separate invoice or extract from the invoice shall be required to cover such samples (19 CFR 144.36(e)).

(f). Forwarding and Entry Procedures - The merchandise shall be delivered to a bonded carrier and forwarded in accordance with the general provisions for transportation in-bond (19 CFR 18.1-18.8). Upon arrival at destination (19 CFR 144.36(g)), the merchandise may be:

1. Entered for re-warehouse in accordance with 19 CFR 144.41;
2. Entered for combined entry and withdrawal for consumption in accordance with 19 CFR 144.42;
3. Exported in accordance with 19 CFR 144.36(h);
4. Forwarded to another port or returned to the port of origin in accordance with 19 CFR 18.5(c) or (d);
5. Admitted to an FTZ, but only in zone-restricted status (19 CFR 146.44(d));
6. Laden as aircraft or vessel supplies. (19 CFR 10.59-10.65)

(g). Exportation - A consignee of merchandise withdrawn for transportation who desires to export the merchandise upon arrival at destination shall advise the port director at destination in writing. The port director shall then permit the exportation of the merchandise pursuant to CBP supervision in the same manner as a withdrawal for indirect exportation pursuant to 19 CFR 144.37 and 7.7(c) BWM (19 CFR 144.36(h)).

7.7. Withdrawal for Exportation or Shipment to Insular Possession - Merchandise entered for warehouse may be withdrawn for exportation or transportation and exportation to a foreign country or for shipment or transportation and shipment to a U.S. insular possession. Shipments to U.S. insular possessions are treated in this section in the same manner as exportations. However, since Puerto Rico is part of U.S. Customs territory (19 CFR 101.1), removal for transportation to Puerto Rico shall be through the procedure for withdrawal for transportation, not withdrawal for exportation.

(a). Filing of Withdrawal - A withdrawal for either direct or indirect exportation shall be filed on a CBPF 7512 in five copies. The port director may require an extra copy or copies of the CBPF 7512 for use in connection with the delivery of the merchandise to the carrier. One copy of the form shall be used as the withdrawal permit copy to be retained by the proprietor. One copy shall be used to initiate the in-bond movement pursuant to the Automated Commercial System. The other copies shall be returned to the importer or transferee for transmittal to the bonded carrier or licensed cartman. If exportation is required by law or regulation or to fulfill a condition of law or regulation, e.g. meat rejected by the Department of Agriculture, alcohol or tobacco products on which IRS tax has not been paid per Section 7.5(c) BWM, the CBPF 7512 shall be prominently marked "EXPORTATION REQUIRED. WITHDRAWAL OR DIVERSION FOR CONSUMPTION NOT PERMITTED" or similar marking to that effect.

(b). Bond Liability - For direct exportation, a bond on a CBPF 301, containing the bond conditions set forth in 19 CFR 113.62, shall be on file with the port director. (19 CFR 18.25(b)) The bond makes the withdrawer responsible for exportation. However, when a bonded carrier for transportation and exportation accepts merchandise, the bonded carrier becomes responsible for exportation (19 CFR 18.26(a) and (d)). A licensed cartman is responsible only for cartage to the place of lading, not for exportation.

(c). Procedure for Indirect Exportation - Merchandise withdrawn for indirect exportation (transportation and exportation) shall be delivered to a bonded carrier and forwarded to the port of exportation in accordance with the general provisions for transportation in bond (19 CFR 18.1-18.8 and 144.36).

1. Splitting of Shipments and Changes of Destination - If any part of a shipment is not exported or if a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the customs house shall be made on a CBPF 7512 for each portion. The splitting of shipments arriving pursuant to warehouse withdrawals for indirect exportation shall be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. The provisions of 19 CFR 18.23 and 18.24 concerning change of destination or retention of merchandise on the dock shall also be followed in applicable cases.

2. Diversions for Consumption - A withdrawal for indirect exportation may be converted to a withdrawal for consumption upon a request to the port director at the port where the withdrawal for indirect exportation was made, unless exportation is required by law or regulation or to fulfill a condition of a law or regulation. (See Sec. 7.7(a) BWM, sixth sentence.)

(d). Exportation by Mail – Warehouse withdrawals may be made for exportation by mail in accordance with the provisions of 19 CFR Part 145, Subpart F. The importer or transferee shall endorse on each mail article a waiver of the right to withdraw the merchandise from the mails (19 CFR 145.71(b)).

(e). Exportation by Foreign-Trade Zone - The importer may withdraw merchandise for transfer to an FTZ in the same or a different port for admission in zone-restricted status. Merchandise from a bonded warehouse may not be admitted to an FTZ zone in any status other than zone-restricted. Withdrawals for transfer to an FTZ shall be made only as direct or indirect exportations, since the merchandise will be deemed exported upon admission in zone-restricted status (19 CFR 146.44(d)). The merchandise may thereafter only be stored or destroyed in the zone or exported (19 USC §81c).

(f). Exportation Pursuant to Port Marks - Direct or indirect exportation from a bonded warehouse may be made only pursuant to the original marks of importation. These are marks placed on the containers, and this provision is intended to prevent false or misleading marks that would tend to hide the original country and port of shipment of the merchandise, a criminal violation pursuant to 18 USC §548. Port marks may be added to the containers by the authority of the port director. The original and port marks shall appear in all CBP documents pertaining to the exportation (19 CFR 144.37(d)).

(g). Weight, Gauge, or Measure - Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of the original entry for warehouse, except as otherwise provided by law. The port director may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary. The proprietor or an independent firm, at the discretion of the port director, may conduct the weight, gauge, or measure (19 CFR 144.37(e)).

(h). Supervision and Control of Exports - Exportation will be generally supervised by CBP pursuant to service wide procedures for export supervision. In practice, a CBPO rarely exercises physical supervision of exports; authorized representatives of the exporting carrier usually do such supervision. The authorized representative of the exporting carrier (or more rarely, a CBPO) will certify lading for exportation on the CBPF 7512. The certified lading copy will be used by CBP to close out the transaction in the Automated Commercial System. However, responsibility for furnishing proof of exportation, if demanded by CBP, is on the withdrawer or bonded carrier, as applicable (19 CFR 113.62(h)(3) or 18.26(d)). Various proofs of exportation accepted by CBP are set forth in 19 CFR 113.55. Merchandise exported by mail may be deemed exported when an authorized representative of the Post Office signs for receipt of the mail package. If satisfactory proof of exportation is not furnished, the port director will issue a claim for liquidated damages against the withdrawer or the bonded carrier, as applicable.

(i). Merchandise Not Laden - Merchandise withdrawn for exportation but not laden shall be sent to G.O. unless the port director prescribes other disposition. (19 CFR 144.37(f)) However, upon written application by the withdrawer, and with the consent of the owner of the dock or airline, the port director may allow merchandise withdrawn for exportation to remain at the dock

or airport for up to 90 days. Although rare, a port director may grant a 90-day extension if such a request is made in writing by the withdrawer. However, the request may not exceed one year from the date of importation (not date of entry) (19 CFR 18.24(a)). Merchandise intended for exportation through in-flight sales aboard aircraft is subject to special procedures pursuant to regulations. New regulations for International Travel Merchandise are being written to conform to 19 USC §1555(c).

(j). Re-landing of Goods - If any merchandise withdrawn for exportation without payment of duties is re-landed at any place in the United States without an entry having been made, the merchandise will be considered to have been imported contrary to law, and each person concerned will be subject to fine or imprisonment or both, and the merchandise will be forfeited (18 USC §544).

(k). Penalty for False Claim of Exportation - Whoever knowingly and willfully files a false claim for an allowance of duties upon the exportation of merchandise, or knowingly and willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing such an allowance upon the exportation of merchandise, greater than that legally due, shall be fined not more than \$5,000 or imprisoned not more than 2 years, or both, and merchandise or the value thereof will be forfeited (18 USC §550).

7.8. Withdrawal for Aircraft or Vessel Supply - Articles of foreign origin may be withdrawn from a bonded warehouse for supplies and equipment of various aircraft and vessels actually engaged in foreign trade or engaged in certain trades among various portions of the United States or between the United States and its possessions. Complete guidelines and instructions for the application of these laws is beyond the scope of the BWM, since they touch also on ftzs, other places in continuous CBP custody, and facilities pursuant to bond of the IRS laws. The principal regulations dealing with such articles are 19 CFR 10.59 through 10.65 (See 19 CFR 144.35). Withdrawal of articles for aircraft or vessel supply pursuant to blanket permits to withdraw is covered in Section 7.9 BWM.

(a). Eligibility for Duty-Free Withdrawal - Eligibility for duty-free withdrawal of vessel and aircraft supplies and various provisions of 19 USC §1309 or 19 USC §1317 and the Customs Regulations limit equipment.

1. Actually Engaged in Foreign Trade - Generally, vessels and aircraft that are actually engaged in foreign trade are entitled to the duty-free withdrawal privilege. Duty-free treatment does not extend to vessels or aircraft on trial or test trips, or being ferried or delivered to a new owner or homeport, preparatory to being actually engaged in foreign trade. (19 CFR 10.59(b)) However, vessels or aircraft departing without passengers or cargo for the purpose of taking on cargo or passengers at another port may be considered to be engaged in foreign trade (19 CFR 10.59(a)(3)). Vessels or aircraft on the domestic leg of a voyage or flight proceeding to or arriving from a foreign port are considered engaged in foreign trade. However, on inward voyages or flights, duty-free withdrawals of bonded fuel may not extend to quantities in excess of actual needs for the remainder of the voyage or flight unless the vessel or aircraft is proceeding to a foreign port immediately after the discharge of cargo or passengers at the termination point of the voyage or flight.

2. Permitted Trades - Generally, vessels or aircraft in coastwise trade are not entitled to duty-free withdrawal privileges. However, duty-free withdrawals of supplies for U. S. flag vessels or aircraft are permitted for (1) voyages or flights between the U.S. and any of its possessions, (2) voyages or flights between Hawaii or Alaska and the rest of the United States, or (3) vessel voyages (but not aircraft flights) between the Atlantic and Pacific coasts of the United States. Duty-free withdrawal privileges do not extend, however, to petroleum products for vessels or flights exclusively between Hawaii or Alaska and the rest of the United States.

3. U.S. Flag vs. Foreign Flag - Duty-free withdrawal privileges for U.S. flag vessels (including fishing vessels) and aircraft is limited to supplies, i.e., consumables such as food, beverages, films, paint, rope, fuel, etc. Foreign-flag vessels (including fishing vessels) may withdraw free of duty not only supplies but also vessel equipment and articles and material needed to repair the vessel. Foreign-flag aircraft may withdraw free of duty supplies, equipment (including ground equipment), and articles and material for vessel maintenance and repair, but only if that country to aircraft accords substantially reciprocal privileges registered in the U.S. (19 U.S.C. §1309). A list of countries that currently accord such reciprocal treatment, with certain exceptions, is provided in 19 CFR 10.59(f). Shipments to U.S. flag vessels may not qualify as exportations for the purposes of some laws (See Sec. 7.8(b) BWM).

4. Fishing Vessels - Supplies, equipment, and repair articles may be withdrawn free of duty and tax for U.S. or foreign fishing vessels on a CBPF 5125 to the extent noted in Section 7.8(a)(3) BWM. However, duty and tax free withdrawal of distilled spirits, wines, and beer is limited to (1) U.S. flag fishing vessels which are documented and have a fisheries license endorsement, and (2) foreign-flag vessels of 5 net tons or more. Furthermore, the port director may deny duty and tax-free withdrawal of alcohol beverages if he is satisfied that (1) the vessel is not engaged in substantially continuous fishing activities and (2) the vessel's complement and expected time at sea are not appropriate for the quantities to be withdrawn (C.D. 3260-050a). There are special reporting requirements for fishing vessels (See Sec. 7.8(f) BWM).

5. Government and Military Vessels and Aircraft - Duty-free withdrawal privileges extend to vessels or aircraft operated by the United States and vessels of war of any foreign flag. In addition, many foreign governments own vessels and aircraft, which actually engage in foreign trade and for that reason, are entitled to duty-free withdrawal privileges. There is no provision in 19 USC §§1309 or 1317 for duty-free withdrawals for foreign military aircraft. However, such aircraft may be entitled to duty-free withdrawal privileges pursuant to the provisions of 19 CFR 148.89 and HTS Subheadings 9809.00.30 and 9806.00.20 (See Sec. 7.4(c) BWM).

6. Cigars, Cigarettes, and Tobacco Products - Cigars, cigarettes, and other tobacco products may be withdrawn free of duty and IRS tax only for consumption beyond the jurisdiction of the United States, i.e., beyond the 3-mile limit or the international boundary. (19 USC §1317) As noted in Section 7.8(a)(4) BWM, tobacco products may not be withdrawn free of duty and tax for certain fishing vessels. The privilege is also not granted to vessels stationed in American waters for an indefinite period without a sailing schedule (19 CFR 10.65(b)).

(b). Supply Use vs. Exportation Requirements - The shipment or delivery of any merchandise for use as supplies, or in the maintenance or repair of any vessel or aircraft, or as ground equipment for any aircraft pursuant to 19 USC §1309(a)(2) or (3), i.e., for foreign flag vessels or aircraft, will be deemed an exportation within the meaning of CBP and IRS laws applicable to the exportation of such merchandise without the payment of duty or IRS tax (19 USC §1317(b)). Thus, withdrawal of such articles for use on U.S. flag vessels or aircraft may not be deemed exportation for the purposes of some statutes.

(c). Filing of Withdrawal - Withdrawals for aircraft or vessel supply shall be made on the CBPF 7501 in four copies. Additional copies may be demanded or accepted by the port director where required for local control purposes. One copy of the CBPF 7501 shall be used as the withdrawal permit copy for the permit file folder. One copy will be used to initiate the movement of the merchandise in the Automated Commercial System. One copy will be used for certification of use on the using vessel or aircraft. Withdrawals may also be made for transportation to another port for aircraft or vessel supply. Three copies of the manifest on the CBPF 7512, in addition to six copies of the CBPF 7501, are required. The procedure is the same as for withdrawal for indirect exportation (19 CFR 144.37(b) and 7.7(c) BWM). The six copies of the CBPF 7501 take the place of the entry copies of the CBPF 7512 (19 CFR 10.60(d)).

(d). Bond Requirements - A bond on a CBPF 301 containing the conditions set forth in 19 CFR 113.62 shall be required for any withdrawal for vessel or aircraft use, including withdrawals for fishing vessels. The conditions in 19 CFR 113.62(h) holds the withdrawer responsible for lading and proper use as vessel or aircraft supplies. The bonded carrier cannot be held responsible for vessel or aircraft supply use pursuant to a withdrawal for transportation and lading at another port. However, unlike other withdrawals, a party other than the principal on the importation and entry bond for the merchandise in the warehouse may, with the consent of the principal, make a withdrawal for vessel or aircraft supply use. (19 CFR 10.60(b) and (c)). Pursuant to this provision, the vessel operator or airline using the supplies or equipment may make the withdrawal. In such cases, the actual withdrawer shall file a bond on a CBPF 301 containing the conditions set forth in 19 CFR 113.62. When merchandise has been laden for vessel or aircraft supply use, the carrier becomes responsible for the safekeeping and disposition of the merchandise pursuant to its international carriers bond (19 CFR 113.64(b)). No bond will be required of vessels of war (19 CFR 10.60(e)) or for lading and use of tobacco products on vessels operated by the U.S. Government (19 CFR 10.65(c)(1)).

(e). Retention on Dock - Upon application of the withdrawer, and with the consent of the owner of the dock or of the airline, merchandise withdrawn for lading may be retained at the dock or airport for up to 90 days. Although rarely granted, extensions may be issued for an additional 90 days, upon written application to the port director (See 19 CFR 18.24(a)). However, the request may not exceed one year from the date of importation (not date of entry). ITM for sale on board aircraft and aircraft supplies are subject to special procedures while being retained at the airport pursuant to 19 CFR Part 122, Subpart M.

(f). Special Permit and Procedure for Fishing Vessels - Before a permit is given for withdrawal for delivery of merchandise to fishing vessels for their use pursuant to 19 USC §1309 the port director must have approved a special permit on a CBPF 5125, supported by a bond on a

CBPF 301, containing the conditions set forth in 19 CFR 113.62. The vessel master shall present the original and triplicate copy of a CBPF 5125 to CBP within 24 hours after each successive arrival at a CBP port or station for an accounting for the withdrawal until the port director is satisfied that the merchandise was consumed on board or properly re-landed pursuant to CBP supervision (19 CFR 10.59(e) and 113.62(h)(2)). After the final accounting, the original will be placed in the proprietor's permit file folder and the triplicate returned to the withdrawer as evidence of proper accounting for the merchandise. Failure to comply with the conditions of the withdrawal will subject the total quantity of merchandise withdrawn to the assessment and collection of duties and taxes equal to the amount that would have been collected if they had been withdrawn for consumption (19 CFR 10.59(e)).

(g). Special Procedure for Aircraft or Vessel Fuel - Some special procedures apply to fuel in a bonded tank which is used only for lading as supplies on vessels and aircraft at the port where the tank is located. Withdrawals of bonded fuel that do not meet the provisions of this section and Section 7.9 BWM shall be treated as any other withdrawal for aircraft or vessel supply.

1. Blending of Fuels - As an incident of delivery of fuels classifiable at different rates of duty, the port director may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the fuels in the delivering conveyance or other suitable location after withdrawal from the tank. In such cases, duty at the highest rate applicable to any of the fuels so blended shall be paid on any portion not delivered within a reasonable time. The receipt of the delivering carrier on the CBPF 7501 shall show, for each warehouse entry number and withdrawal number, the types and quantities of fuel actually received (19 CFR 10.62(c)(1)).

2. Ineligible Withdrawals - If a vessel not entitled to duty-free withdrawal should be supplied with fuel from a bonded tank covered by this subsection because of any emergency, a duty-paid withdrawal shall be filed on the first day the customhouse is opened after the fuel is laden on the using vessel. If there are repeated or willful instances of late filing of a duty-paid withdrawal in such instances, the port director shall require the filing of a duty-paid withdrawal before the removal of the fuel from the bonded tank (19 CFR 10.62(e)).

3. Record Checks of Procedure - During CBP compliance reviews and audits, withdrawals made pursuant to this subsection will be verified against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the fuel. The withdrawer shall maintain all pertinent records of the withdrawal, delivery, or receipt of the fuel for 5 years after liquidation of the entry for the fuel (19 CFR 10.62(f)).

(h). Special Procedure for Cigars and Cigarettes - The duty-free withdrawal of cigars and cigarettes is subject to the restrictions in eligibility set forth in Section 7.8(a)(6) BWM. This subsection covers special procedures applicable to the withdrawal of these articles. Procedures for such withdrawals pursuant to blanket permits to withdraw are covered in Section 7.9 BWM.

1. Packing in Shipping Cases - When a shipping case of cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each is numbered and marked for identification and contains not less than 250 cigars or

1,000 cigarettes (19 CFR 10.65(c)(2)).

2. Certificates of Use - The port director may require a certificate of use from a person having knowledge of the facts that consumption of the cigars and cigarettes did not begin until the aircraft or vessel had proceeded beyond the 3-mile limit or international boundary.

(i). Supervision and Cancellation of Bond - CBPOs do not routinely conduct physical supervision of lading of vessel or aircraft supplies. General supervision is maintained through certificates of lading as aircraft or vessel supplies signed by an authorized representative of the using carrier. A copy of the certification on the CBPF 7501 is associated by CBP with the outward manifest of the vessel or aircraft. The entry bond is usually credited or cancelled upon departure of the using vessel or aircraft from the port of lading in the trade or business entitling the articles to exemption from duties and taxes (19 CFR 10.64(a)).

1. Departures in Ballast - If the vessel or aircraft is not operated by the United States, and proceeds in ballast to another port for lading of passengers or cargo, the port director may allow the filing of a proper declaration of use by a person having knowledge that the articles were used for aircraft or vessel supply. This declaration must be filed within 3 months after the date of withdrawal of the articles. The prescribed text of such a declaration is found in 19 CFR 10.64(a)(2).

2. Aircraft Ground Equipment - In the case of ground equipment, the entry bond may be credited or cancelled when the article is delivered for use as ground equipment. (19 USC §1317(b))

3. Retention at Dock or Airport – Merchandise may be retained at the dock pursuant to the authority of 19 CFR 18.24(a) and the procedures of 19 CFR Part 122, Subpart M. The using airlines will furnish certificates of use for each aircraft lading. When all merchandise has been laden for aircraft supply use, lading will be certified on the CBPF 7501 by the withdrawer and the form returned to CBP for verification and closeout of the withdrawal.

4. Proof of Exportation - While CBP follows procedures to verify closeout of withdrawals for vessel and aircraft supplies, the withdrawer has the responsibility for providing timely proof of a qualifying use pursuant to 19 USC §1309 or §1317, when requested by the port director (19 CFR 113.62(h)(3)). Failure to provide such proof within a reasonable time is considered by CBP as prima facie evidence of a default in the importation and entry bond, and a notice of liquidated damages will be issued to the withdrawer.

(j). Re-landing in the United States - Any article exempted from duty or tax pursuant to 19 USC §1309 or §1317 that is thereafter removed from any vessel or aircraft or otherwise returned to the United States will be treated as an importation from a foreign country. Such articles may be landed pursuant to CBP supervision and proper permit, the same as if they had been laden in a foreign country (19 CFR 10.63). Re-landing of the articles in the United States without proper permit will be treated as a default in the bond conditions of 19 CFR 113.62(h)(1) and (4) or 19 CFR 113.64(b), and may constitute a felony, with criminal penalties pursuant to 18 USC §§544 or 545.

7.9 Blanket Permit to Withdraw - The port director may issue blanket permits to withdraw (1) articles for aircraft or vessel supply, (2) articles from duty-free stores for delivery to individuals for exportation for their use while abroad, and (3) articles for diplomatic use, all of the foregoing for delivery only at the port, or pursuant to the jurisdiction of the port, where the warehouse is located. The covered trades are characterized by numerous shipments of merchandise in small quantities, and the purpose of blanket permits to withdraw is to eliminate the need for withdrawers to make frequent applications to withdraw and for CBPOs to approve them. Once a blanket permit is approved, the withdrawer may make individual withdrawals pursuant to the blanket permit without the need for further approval by the port director. Withdrawals shall be deemed to occur when the withdrawer executes the individual withdrawal (or sales ticket in the case of duty-free stores). A blanket permit to withdraw often covers the entire amount of merchandise in the warehouse entry. However, a given warehouse entry may give rise to more than one blanket permit, or a combination of individual withdrawals and blanket permits. Procedures for blanket permits and withdrawals are spelled out in detail in this section.

(a). Qualifications of Applicant - An applicant for a blanket permit is presumed to have the knowledge and awareness of the conditions pursuant to which a supplementary withdrawal may not be made pursuant to a blanket permit, with special reference to restrictions on the eligibility for duty-free withdrawal of vessel and aircraft supplies (Sec. 7.8(a) BWM) and compliance with diplomatic procedures pursuant to 19 CFR Part 148 and Section 7.4 BWM. If a withdrawer is unsure whether a supplementary withdrawal may be made, he should ask the appropriate CBPO or file an individual withdrawal as specified in Section 7.9(f) BWM. The port director may revoke a blanket permit if it is necessary for CBP to review each withdrawal to protect the revenue or for compliance with the laws and regulations.

(b). Restriction on Airport Delivery - A blanket permit will not be issued by CBP for merchandise to be retained at an airport pursuant to the authority of 19 CFR 18.24(a) and the procedures of 19 CFR Part 122, Subpart M. Issuance of a blanket permit would confuse whether controls are to be exercised at the warehouse by the proprietor or at the airport by the airline, and would delay inordinately the return of the lading copy of the supplementary withdrawal pursuant to Section 7.9(e)(5) BWM. If a withdrawal for retention pursuant to 19 CFR 18.24 is desired of merchandise for which a blanket permit has already been issued, an individual application for a permit will be filed with the port director and the merchandise accounted for as prescribed in Section 7.9(f) and (g) BWM.

(c). Filing and Processing of Blanket Permit - To obtain a blanket permit, a withdrawer shall file in triplicate an application on a CBPF 7501 or a CBPF 7512, as provided in 19 CFR 10.62, 10.62(a), 10.65, or 19.6(d)(1), as applicable. The form shall bear the words "APPLICATION FOR BLANKET PERMIT TO WITHDRAW" in capital letters printed or stamped in the top margin.

1. Multiple-Use Permits - A withdrawer may file one application for a blanket permit to withdraw merchandise for aircraft or vessel supply use or exportation from duty-free stores or diplomatic use. Such an application shall be filed on a CBPF 7512 and shall clearly set forth the intent to withdraw for the above multiple duty-free uses. Merchandise for multiple uses

shall be accounted for as provided in Section 7.9(g) BWM.

2. Information Requirements – A CBPF 7501 or a CBPF 7512 will be prepared as completely as is consistent with its purpose as a blanket application for a permit to withdraw. However, the statement of quantity specified in 19 CFR 144.32(a) and the statistical information specified in 19 CFR 141.61(e) shall not be shown on the application. Also, no statistical copy of the CBPF 7501 or CBPF 7512 for a blanket permit to withdraw shall be submitted to or accepted by CBP.

3. Application Processing - The application will be reviewed by CBP for compliance with the requirements of Section 7.2 BWM, with due allowance for the exceptions noted above. The port director is instructed to maintain a control procedure to assure that CBP will be notified when all of the merchandise covered by a blanket permit has been withdrawn. Upon approval of the application, the permit will be given a unique number and the original transmitted to the proprietor for retention in the permit file folder. The remaining copies will be returned to the applicant/withdrawer.

4. Revocation of Blanket Permit - The port director may revoke a blanket permit to withdraw whenever necessary to protect the revenue and properly administer U.S. laws and regulations, and may thereafter require applications for each removal of merchandise from the warehouse.

(d). Proprietor Responsibility for Blanket Permit - Upon receipt of the original copy of the blanket permit, the proprietor shall file it in the permit file pending the filing of individual withdrawals against it. The proprietor shall be responsible for maintaining records pertaining to individual withdrawals, including lading copies of withdrawals used to document lading for vessel or aircraft supply or exportation by individuals of duty-free store merchandise. Merchandise for which a blanket permit to withdraw has been issued should be segregated, marked, or otherwise clearly identified to distinguish it from merchandise for which no permit to withdraw has been given. Furthermore, cigars and cigarettes for which a blanket permit has been given for withdrawal pursuant to 19 USC §1317 shall be stored in a separate room or enclosure pursuant to separate locks of the proprietor. If a compliance review or audit discloses that any merchandise is missing or cannot be accounted for, duties and taxes shall be paid thereon before any further withdrawals are permitted (19 CFR 10.65(c)(4)).

(e). Filing of Supplementary Withdrawals - Withdrawers shall file supplementary withdrawals (partial releases), showing the date of execution, pursuant to approved blanket permits, as provided in 19 CFR 10.62, 10.62a, 10.65 and 19.6(d)(3), and the provisions of this section. The supplementary withdrawal may be overtyped on a copy of the Application for a Blanket Permit. Each supplementary withdrawal shall be consecutively numbered and the number shall appear immediately after the unique number of the blanket permit (19 CFR 19.6(d)(3)). A copy shall be placed in the permit file to document delivery by the proprietor to the cartman. The original and one copy shall accompany the merchandise for delivery to the lading vessel or aircraft. The supplementary withdrawal for duty-free stores is the sales ticket.

1. Information Requirements – The statement of quantity (see 19 CFR 144.32(a)) is

required on the supplementary withdrawals, except in the case of sales tickets for duty-free stores. It shall reflect the inventory balance in the warehouse, and not necessarily the quantity remaining to be withdrawn pursuant to the blanket permit. The additional information required for bonded fuel withdrawals pursuant to 19 CFR 10.62(a) shall be shown on the withdrawal as it becomes available during the processing of the withdrawal.

2. Proprietor Responsibility for Removal pursuant to Blanket Permit - The proprietor shall not allow any merchandise covered by a blanket permit to withdraw to be removed from the warehouse until a supplementary withdrawal (or sales ticket, in the case of duty-free stores) has been executed.

3. Supervision of Lading of Vessel/Aircraft Supplies - The CBPO who supervises lading, or the authorized vessel or airline representative, as applicable, shall certify lading in the appropriate space on the documents as evidence of lading for vessel or aircraft supply use. The original shall be returned to the proprietor, and the copy will be attached by CBP to the vessel or aircraft outbound manifest.

4. Diplomatic Use and Duty-Free Store Processing - No lading copy is required for diplomatic use withdrawals, but each withdrawal shall be supported in the permit file by DS Form 1504 per Section 7.4(d) BWM. .

5. Proprietor Responsibility for Lading Copy - Upon receipt of the original (lading) copy, the proprietor shall:

A. Review it to see that it was appropriately signed and dated;

B. Advise the port director immediately by telephone if the lading copy bears no signature or date, or if the signature does not appear to be valid, genuine, or that of an authorized official of the carrier;

C. Notify the port director if a lading copy is not received within 15 days after removal from the warehouse;

D. After the review is completed, place the lading copy in the permit file, attached to the cartman pickup copy.

(f). Withdrawals for Other Disposition - The blanket permit does not cover withdrawals for consumption, transportation, exportation (other than duty-free store), or transportation and exportation. A withdrawer who wishes to withdraw merchandise already covered by a blanket permit for disposition other than as provided for in this section may do so pursuant to the procedures set forth in the Customs Regulations and elsewhere in the BWM. However, the withdrawal form shall bear a notation that a blanket permit previously covered the merchandise and shall show the number of that permit. These withdrawals shall be independently numbered and processed, but an accounting shall be made for them pursuant to the blanket permit as provided in section 7.9(g) BWM.

(g). Last Withdrawal Pursuant to Blanket Permit - The proprietor shall provide an accounting for all goods covered by a blanket permit through individual supplementary withdrawals before the permit file folder is transmitted to CBP pursuant to 19 CFR 19.12(a)(2). (19 CFR 19.6(d)(3)) When the last withdrawal pursuant to a blanket permit (including the last sales ticket in the case of duty-free stores) is filed, the withdrawer shall stamp or print conspicuously in capital letters thereon the words "LAST WITHDRAWAL PURSUANT TO BLANKET PERMIT." A copy of the last withdrawal shall be sent directly to CBP for closeout of the blanket permit transaction.

1. Summary Blanket Permit - In addition, the withdrawer shall prepare a summary accounting for all merchandise covered pursuant to the blanket permit. The summary shall be prepared on the same form, CBPF 7501 or CBPF 7512, as the blanket permit, and may be overtyped on the Application for a Blanket Permit. The summary shall include a listing of the quantities of merchandise included in the blanket permit but subsequently withdrawn for consumption, transportation, transportation and exportation, or other disposition (Sec. 7.9(f) BWM). If the blanket permit covered withdrawals for multiple uses (Sec. 7.9(c)(1) BWM), the summary shall include an accounting of those uses. A copy of the Summary Blanket Permit shall be retained in the permit folder. Another copy, including all the required statistical information, shall be sent to the port director with, or in connection with, the last individual withdrawal pursuant to the blanket permit, as the statistical copy required pursuant to 19 CFR 144.37(a).

2. Last Withdrawal Pursuant to Entry - If the final withdrawal pursuant to the blanket permit is also the final withdrawal pursuant to the warehouse entry, the withdrawer shall also stamp or print conspicuously in capital letters in the description portion of the Summary Blanket Permit the words "LAST WITHDRAWAL PURSUANT TO WAREHOUSE ENTRY NO. _____." The purpose of this notation is to alert CBP that the entry is being readied for liquidation. It does not eliminate or replace the need for filing and transmittal of the last withdrawal on the blanket permits per Section 7.9(g)(1) BWM above.

7.10 Last Withdrawal from Warehouse - A warehouse entry that is not liquidated within 1 year from the date of final withdrawal of all the merchandise shall be deemed liquidated by operation of law as entered, or as withdrawn for consumption, by the importer or transferee (19 CFR 159.11). The 1-year period may be extended only for the reasons specified in 19 CFR 159.12.

(a). Identifying Final Withdrawal - To avoid automatic liquidation pursuant to 19 CFR 159.11, port directors will establish a procedure to identify the receipt of the final withdrawal for all warehouse entries. Usually, this can be determined because the statement of quantity required by 19 CFR 144.32(a) shows a zero balance.

(b). Responsibility of Importer, Transferee, and Proprietor - The burden of showing on the appropriate form that a withdrawal is a final withdrawal is on the importer or transferee. (19 CFR 144.32(a)) To emphasize a final withdrawal, the withdrawer shall stamp in prominent letters on the face of the withdrawal document "FINAL WITHDRAWAL". A withdrawer who misrepresents a final withdrawal, or misstates the inventory balance required pursuant to 19 CFR

144.32(a) or (b) through fraud, gross negligence, or negligence may be penalized pursuant to 19 USC §1592. A proprietor who has knowledge of such misrepresentations and does not report them to the port director may also be subject to such penalties.

(c). Transmittal of Permit File Folder - The proprietor shall review the permit file folder and forward it to the port director within 30 calendar days (19 CFR 19.12(d)(4)(ii)) after final withdrawal, as pursuant to Section 5.5(e) BWM. The port director will establish a control procedure to assure that file folders are timely received. Upon request by the proprietor, the port director will issue a written receipt for the file folder.

7.11 Removal from Warehouse - Merchandise which has been deposited in a bonded warehouse pursuant to a warehouse or rewarehouse entry may not be removed therefore except upon permit to withdraw given by the port director, as set forth in 19 CFR 144.39. Merchandise for which a blanket permit to withdraw has been given may not be removed from the warehouse until a supplementary withdrawal (or sales ticket in the case of a duty-free store) has been executed.

(a). Retention in a Bonded Warehouse - Merchandise for which a permit to withdraw has been given need not be physically removed from a bonded warehouse. However, it must be segregated or marked to maintain its identity as merchandise for which a permit to withdraw has been issued. Duty-paid and unconditionally duty-free merchandise for which a permit to withdraw for consumption has been given, but has not been removed, is no longer in CBP custody. All other goods for which a permit to withdraw has been issued, but have not been removed, remain in CBP custody until the end of the 5-year warehouse period (19 CFR 19.6(b)(2)).

(b). Liability of Proprietor for Removal - Before any removal, the proprietor shall check to be sure that the port director has given a specific or blanket permit for the removal. The proprietor will be relieved of responsibility for merchandise in the warehouse in its condition and quantity as shown on the withdrawal document, as adjusted by any discrepancy report made jointly by the proprietor and the cartman, bonded carrier, or independent weigher, gauger, or measurer, and signed by their authorized representatives on the withdrawal document within 15 days after removal from the warehouse. The proprietor will be relieved of responsibility only if it obtains the signed receipt of the cartman or bonded carrier named in the permit document. The discrepancy reporting procedure upon removal is described in Section 8.5 BWM.

(c). Supervision of Removal - The proprietor shall supervise all deliveries of merchandise from the warehouse (19 CFR 19.4(b)(1)); record all removals in its inventory and accounting records (19 CFR 19.12(a)(1)); adjust its inventory balance (19 CFR 19.12(c)(3)); and place a copy of the permit for each removal in the permit file folder within 5 business days after the event occurs (19 CFR 19.12(d)(4), as interpreted by Sec. 5.5(e) BWM). The proprietor shall also affix CBP in-bond seals to any conveyance of merchandise approved for in-bond movement from the warehouse upon order of the port director. (19 CFR 19.6(e)).

(d). Delivery to Authorized Party - Merchandise in a bonded warehouse will be released by CBP only to or upon the order of the warehouse proprietor (19 USC §1484(c)). The proprietor

shall deliver the merchandise only to a duly authorized party, as follows:

1. Withdrawals for consumption - importer, transferee, or other party as specified in the Regulations;
2. Withdrawals for transportation to another port for any disposition - bonded carrier approved pursuant to 19 CFR Part 112, Subpart B;
3. Withdrawals for exportation, vessel or aircraft supply, or transfer to another warehouse at the same port – licensed cartman pursuant to 19 CFR Part 112, Subpart C;
4. Transfers for sale - licensed cartman or CBP contractor or purchaser at auction; and
5. Entries of G.O. – importer as named in entry permit.

(e). Removal Without Permit - Removal of merchandise from a bonded warehouse without a CBP permit is a default in bond conditions set forth in 19 CFR 113.63(b)(2) and (c)(3), and will subject the proprietor to a claim of liquidated damages. In addition, anyone who unlawfully removes any merchandise from a bonded warehouse or who receives or transports any merchandise unlawfully removed from a bonded warehouse knowing it to have been unlawfully removed, will be fined not more than \$5,000 or imprisoned not more than 2 years, or both (18 U.S.C. §549).

7.12 Merchandise Not Removed From Bonded Warehouse - The total period of time merchandise may remain in a bonded warehouse shall not exceed 5 years from the date of importation (19 USC §1557(a)). Merchandise upon which duties and charges are unpaid beyond 5 years from the date of importation shall be regarded as abandoned to the Government and sold. (19 USC §1559) Merchandise upon which all duties and charges have been paid beyond the 5-year period is no longer in CBP custody and control (19 USC §1559), and may remain in the bonded warehouse beyond the 5-year warehouse period.

(a). Procedural Controls - The port director will maintain a control procedure to identify any warehouse entry for merchandise that has not been withdrawn within the warehouse period (19 CFR 19.12(d)(4)). The proprietor shall file with the port director on a CBPF 6043, the permit file folder for any merchandise not so withdrawn when requested by the port director (19 CFR 19.12(d)(4)).

(b). Disposition of Merchandise - Merchandise, upon which duties and charges are unpaid, remaining in the warehouse beyond the 5-year period shall be considered to be involuntarily abandoned (19 CFR 127.12(a)(2)). Such merchandise shall be ordered by the port director to be sold as provided in 19 CFR Part 127, Subpart C, but may be withdrawn for consumption at any time prior to sale (19 CFR 127.14(b)). Procedures for removal to the place of sale or the place of storage pending sale are described in Section 10.8(b) BWM.

7.13 Bond Liability After Removal or Liquidation of Entry - Where an obligation arose pursuant to the warehouse entry bond or custodial bond, this obligation continues to run until

either it is fulfilled or the statute of limitations has run, even if all of the merchandise has been removed from the warehouse, the bond has been terminated by the surety, bonded status has been revoked by CBP, or the entry has been liquidated (See Sec. 9.9 BWM).

7.14 Drawback or Refunds on Warehoused Merchandise - Merchandise which is withdrawn for consumption upon payment of duties and taxes is generally eligible for drawback pursuant to the provisions and procedures of 19 CFR Part 191. However, there are some special provisions and exceptions to be observed:

(a). Merchandise which has been withdrawn for consumption but remains in a bonded warehouse within the bonded period is not eligible for a refund upon exportation pursuant to 19 USC §1557(a), which requires that the merchandise be exported from continuous CBP custody. Merchandise that has been withdrawn for consumption, but remains in the warehouse is regarded as no longer in CBP custody (19 CFR 19.6(b)(2) and 191.133(c)). However, after release from the warehouse and CBP custody, it may be eligible for drawback.

(b). Merchandise which has been withdrawn for consumption but remains in a bonded warehouse may, however, be eligible for a refund upon destruction or casualty loss during the bonded period pursuant to 19 USC §1558(a). Also see Sec. 6.3(c)(3) BWM).

(c). Manufacturing drawback pursuant to 19 USC §§1313(a) or (b) will not be allowed unless the completed article is exported within 5 years from the date of importation of the imported merchandise (19 USC §1313(i)). Unused drawback will not be allowed for merchandise unless it is exported or destroyed within 3 years from the date of importation of the imported merchandise. The date of importation means, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, "date of importation" means the date on which the vessel arrives in the United States with the intent then and there to unlade such merchandise. See 19 CFR 101.1.

(d). Imported merchandise which is entered for warehouse and has not yet been withdrawn is not eligible for unused drawback pursuant to the substitution provision of 19 USC §1313(j)(2) even if it is thereafter withdrawn and exported.

(e). Imported duty-paid distilled spirits which have been packaged or bottled in the U.S. for export and transfer to a bonded warehouse pursuant to 26 U.S.C. §5214(a)(9) for storage pending exportation are entitled to drawback of IRS tax paid to the TTB upon receipt in the bonded warehouse. However, they are not entitled to drawback of duties or taxes paid to CBP by reason of importation pursuant to 19 USC §§1313(a) or (b) until actual exportation, as defined in 19 CFR 101.1, from the warehouse.

(f). Duties and IRS taxes paid on distilled spirits, wines, and beer previously withdrawn may be refunded if the merchandise was lost, rendered unmarketable, or condemned by an authorized public official because of (1) fire, flood, casualty, or other disaster, or (2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or other malicious mischief, pursuant to the provisions of 26 USC §5064. The procedures for claiming such refunds are found

in 27 CFR Part 170, Subpart O.

PART 8 - DISCREPANCY REPORTING, CASUALTY LOSS, AND ABANDONMENT

8.1 General - Through various provisions of the Tariff Act, importers and transferees can obtain allowances or relief from duties for merchandise entered into a bonded warehouse due to loss, damage, or abandonment before, upon, or after entry into the bonded warehouse. Additional duties may become due because of upward adjustments in the quantity of merchandise in the warehouse. The purpose of Part 8 is to clarify the responsibilities of importers, transferees, proprietors and others for shortages, abandonment, damages, casualty loss, and overages.

8.2 Proprietor Responsibility – 19 CFR 19.4(b)(1) holds the proprietor responsible for supervising all receipts, deliveries, sampling, recordkeeping, or manipulations in a warehouse. This includes prompt verification of the quantity and condition of manifested merchandise.

(a). CBP Supervision of Receipt or Removal - When a CBPO physically supervises the deposit or removal of merchandise at a bonded warehouse, his or her report shall be determinative of the quantity and condition of the merchandise received or removed for CBP purposes. (19 CFR 19.6(c)) Otherwise, determination of quantity and condition shall be made by agreement among parties or through procedures of this Part.

(b). Proprietor Liability Upon Receipt and Removal - The proprietor assumes liability for merchandise upon signing for its receipt as provided in 19 CFR 19.6(a)(1) and 4.15(c) BWM. The proprietor does not assume liability for merchandise not actually received at the warehouse. (Sec. 4.12 BWM) The proprietor is relieved from liability upon removal of merchandise as provided in 19 CFR 19.6(b)(1) and (d)(3) and 7.11(b) BWM.

(c). Adjustments After Deposit - After deposit of the merchandise, the proprietor's liability may be modified by an adjustment allowed the importer or transferee by the port director for concealed shortages (19 CFR 158.5(a)), casualty loss (19 CFR Part 158, Subpart C), destruction (19 CFR 158.43), or manipulation (19 CFR 19.11) (19 CFR 19.6(a)(2)). When these adjustments are allowed by CBP, the proprietor will be notified through a copy of the appropriate form. The proprietor shall place the form in its permit file folder, and note the adjustment in its inventory and accounting records. Excess merchandise found after deposit shall be sent to General Order status.

Note that no adjustment is authorized for unconcealed within-case shortages unless they are found and reported by the proprietor upon deposit or within 20 days thereafter.

Note also that adjustments in liability, specifically in the case of manipulation, may be upward, as well as downward.

(d). Proprietor vs. Importer Liability - Generally, the proprietor is responsible for the safekeeping of merchandise in the warehouse, from the time it signs for receipt until another party signs for removal. The importer is generally responsible for guaranteeing payment of duties and taxes from the time of importation until the warehouse entry is liquidated. Thus, the time and nature of their liabilities are interrelated but not necessarily concurrent. The proprietor will not be held liable for loss or damage that occurs after importation but before receipt in the

warehouse. The importer will be assumed liable for duties and taxes on the lost or damaged merchandise unless a carrier, cartman, or other party can be held responsible. The proprietor may be held responsible for covering duty and tax losses on distilled spirits in the warehouse for which the importer is not liable. (Sec. 11.5(a) BWM). Otherwise, the proprietor will not be required to cover duty and tax losses through liquidated damages when the importer is primarily liable for such losses and there is no evidence of negligence on the part of the proprietor.

8.3 Discrepancies Found Upon Receipt - Allowances for discrepancies found upon receipt in the warehouse are covered generally in 19 CFR 19.6(a)(1) and 19 CFR Part 158, Subpart A.

(a). Manifest Discrepancy Reporting – The inward foreign manifest of an importing carrier should be corrected if there is any merchandise on board the carrier which is not included in or does not agree with the manifest. Since such manifest discrepancies may not be discovered until the merchandise arrives at a bonded warehouse, a Manifest Discrepancy Report must be filed to assure the appropriate correction of the manifest and determine the proper responsibility for the discrepancy. CBP procedures for filing Manifest Discrepancy Reports are found in CD 3240-067A (Manifest Discrepancy Reporting; June 4, 2000). The procedures in this section incorporate the procedures of that directive.

(b). Break-bulk Conveyance Not Sealed – The proprietor and carrier must file a joint agreement regarding any discrepancy in a not sealed conveyance within 15 days after deposit of the merchandise into the warehouse. CBP policy is that a discrepancy (overage or shortage, including an unconcealed within-case shortage) in loose freight or in merchandise in an unsealed conveyance or a conveyance whose seal is not intact, found upon receipt in a bonded warehouse must be reported by the proprietor to CBP as a Manifest Discrepancy Report on a CBPF 6043, CBPF 7501, CBPF 7512, or other approved form. The report to CBP must be filed within 2 business days of the signed agreement. The Manifest Discrepancy Report must include a clear and concise statement for the discrepancy and including the following statement signed by the parties:

"We hereby declare that the information contained in this document is true and correct to the best of our knowledge and believe that the discrepancy described herein occurred for the reasons stated."

(c). Concealed Within-Case Shortage or Discrepancy in Sealed Conveyance - When a proprietor discovers a concealed within-case shortage or a discrepancy (shortage or overage) in quantity in a container which was received with seals intact, the discrepancy will be reported to CBP as a Manifest Discrepancy Report on the proprietor's letterhead, with the explanation and declaration specified in Section 8.3(a) BWM, within 20 days after receipt of the merchandise in the warehouse. The report should be accompanied by a dock receipt or other evidence of non-receipt or non-importation of the merchandise, and in the case of containerized merchandise, evidence that the seal was intact and was a foreign seal.

1. "Seals Intact" - Means a conveyance containing imported merchandise and the seals which were reported to have been affixed to it meet all of the following conditions:

A. All of the seals are of a type that will not permit removal without breaking or leaving evidence of tampering, cannot be used more than once, and cannot be easily counterfeited;

B. none of the seals that were affixed have been broken, removed, replaced, or tampered with in any manner that indicates it was removed and reaffixed;

C. the unique numbers of all the seals are the same as the seal numbers reported on the manifest or cartage ticket pursuant to which the conveyance was accepted for transportation;

D. the condition of the conveyance is such that merchandise can be removed therefrom only through sealed doors or other authorized openings; and

E. the proprietor and delivering carrier have executed a written concurrence that the seals are intact, or a CBPO has certified that the seals are intact.

(d) Conveyance With Seals Not Intact - When a proprietor receives a conveyance whose seals are not intact according to the above definition, the shipment shall be reported to the port director, and the conveyance and its contents shall be held intact pending instructions. (19 CFR 19.6(e)) It is very important that the proprietor obtain the concurrence of the carrier or cartman as to the condition of the seals and conveyance on the permit document. If the port director allows unloading of the conveyance without CBP physical supervision, the proprietor as provided in Section 8.3(a) BWM shall report any discrepancies between the entered and received quantities.

(e) Bulk Merchandise - A discrepancy (overage or shortage) between the manifested amount of bulk cargo and the quantity received in a bonded warehouse need not be reported as a Manifest Discrepancy Report pursuant to Section 8.3(a) or (b) BWM if the port director is satisfied that the discrepancy is an ordinary and usual difference properly attributable to absorption of moisture, temperature difference, faulty weighing or gauging at the port of lading, or similar causes. However, any discrepancy of petroleum or petroleum products imported in bulk must be reported as a Manifest Discrepancy Report if the discrepancy exceeds 1 percent of the manifested quantity (19 CFR 4.12(c)).

1. Weigher, Gauger, or Measurer's Report - In the case of bulk merchandise, any discrepancy reported by an independent weigher, gauger, (19 CFR 151.13) or measurer and signed by an authorized representative of the company employing such weigher, gauger, or measurer may be accepted by the port director to amend the quantities for which the proprietor is liable.

(f). Refused Shipments and Non-agreement - In instances where the warehouse proprietor refuses a shipment, or a joint determination of quantities (where required) cannot be agreed upon, the carrier, cartman, or proprietor shall immediately notify CBP. The merchandise shall then be deposited in another bonded warehouse or the public stores or handled as otherwise ordered by the port director. CBP will not serve as an arbitrator in quantity or condition disputes between commercial parties.

(g). Recordkeeping and Time Limit - A copy of the Manifest Discrepancy Report shall be placed in the permit file folder. The discrepancy recorded in the proprietor's inventory and accounting records, and the record balance adjusted accordingly. Any discrepancy found after receipt or, in any case, more than 20 days after receipt shall be reported and treated as provided in Section 8.4 BWM.

8.4 Discrepancies Found After Receipt - After merchandise has been received and accounted for in the bonded warehouse and adjustment is made for discrepancies, any further discrepancy found by the proprietor before removal from the bonded warehouse will be reported and treated as provided in 19 CFR 19.12(d)(3) and this section of the BWM.

(a). Reporting - The proprietor shall immediately bring to the attention of the port director any theft or suspected theft, any overage, or any extraordinary shortage or damage (1 percent or more of the value of the merchandise covered by an entry). The report shall be confirmed in writing within five business days after the shortage, overage or damage has been brought to the attention of the port director (19 CFR 19.12(d)(3)). The written report shall be made on the proprietor's letterhead unless one of the following CBP forms is filed within the time limit:

1. A CBPF 7501 (Entry Summary) for Theft, suspected theft, or extraordinary shortage - Code 31, with estimated duties and taxes attached, filed by importer or transferee;

2. A CBPF 7501 (Entry Summary) for Overage - Type 21 for a warehouse entry, or Type 01 for a consumption entry filed by the person with the right to make entry. If a consumption entry is filed, the excess merchandise shall be removed immediately from the warehouse. If no entry is filed, the excess merchandise will be sent to G.O.

3. A CBPF 4315 (Application for Allowance in Duties) for Extraordinary damage - filed by the importer or transferee pursuant to the procedures in 19 CFR Part 158, Subpart C, and Section 8.6 BWM.

(b). Non-extraordinary Shortage or Damage - Minor shortages or damage (less than 1 percent of the value of the merchandise in an entry) need not be reported to CBP immediately. However, the proprietor shall document the shortage immediately by placing in the permit file folder a form of its own design containing the following information:

1. quantity and value of merchandise that is the subject of the shortage or damage;
2. date of identification as shortage or damage;
3. reason for shortage or damage, if known, and occasion for having noticed; and
4. name, title, and signature of person who identified the shortage or damage.

The importer may, at its option, file a warehouse withdrawal for consumption on a CBPF 7501 on such a shortage and pay the applicable duties and taxes on the short merchandise. If a withdrawal for consumption is not filed, duties and taxes will be collected upon liquidation of the

warehouse entry.

1. Cumulative Shortages - The 1 percent figure in 19 CFR 19.12(d)(3) is cumulative during the entire warehouse period or until final withdrawal. That is, whenever a series of minor losses accumulate to 1 percent or more, the entire shortage will be deemed to become extraordinary and must be reported immediately to the port director. Minor losses that occur after a report of such an extraordinary shortage is made will continue to be treated as cumulative until they reach a subsequent 1 percent level.

2. Non-Reporting Requirement Not an Entitlement - The fact that minor loss or damage is not required to be reported immediately does not mean there is an automatic loss allowance for proprietors or importers. The loss or damage must be recorded accurately, as noted in Section 8.4(c) BWM, and liquidated damages will be assessed for negligent or deliberate removals of merchandise pursuant to the 1 percent level. However, because non-extraordinary shortages and damages need not be reported immediately, the loss is small, and duties and taxes, in any case, are collected upon liquidation, special consideration is made pursuant to Section 15.11(b)(1) BWM in providing relief from liquidated damages for non-extraordinary shortages.

(c). Recordkeeping of Discrepancies - All discrepancies found in a warehouse, including non-extraordinary shortages or damages, shall be:

1. recorded in the proprietor's accounting and inventory records by warehouse entry or G.O. lot number;
2. recorded by filing a report in the proprietor's permit file folder;
3. reported cumulatively by entry or G.O. lot on a CBPF 300 at the end of the proprietor's business year; and
4. deducted from the record balance of goods covered by the entry or lot.

8.5 Discrepancies Found Upon Removal - When there is a difference between the quantity shown on the withdrawal form and the amount received by the cartman or carrier for removal from the bonded warehouse, a joint agreement as to the discrepancy shall be noted on the withdrawal document, signed by both the carrier or cartman and the proprietor within 15 days after removal and forwarded to the port director within two days after their joint agreement. The proprietor and an independent weigher, gauger, or measurer for bulk merchandise may make a similar joint discrepancy report. The proprietor will not be relieved of liability in any case if it does not receive the signed receipt of the cartman or carrier for merchandise to be carted or transported in-bond, signifying that the cartman or carrier acknowledges receipt and liability for the merchandise (19 CFR 19.6(b)(1)). In the case of withdrawals for consumption, the port director may accept a joint agreement of the proprietor and the importer or transferee or their respective agent within 15 days after the withdrawal permit has been issued by CBP.

8.6 Casualty Loss or Damage - An allowance may be made in duties for actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty while in a

bonded warehouse. No allowance shall be made for injury or destruction occurring after 3 years from the date of importation (even though the warehouse period is 5 years). (19 USC §1563) Casualty loss and damage are to be distinguished from destruction pursuant to 19 USC §1557(c) or 19 USC §1558(a)(2) or damage pursuant to 19 USC §1506.

(a). Filing Requirements - Application shall be made by the importer in duplicate on a CBPF 4315 within 30 days after the date of discovery of the injury or destruction. (19 CFR 158.23) Within 90 days of the date of discovery, the importer shall file evidence of loss or damage. Although no allowance may be made for casualties that actually occur after 3 years from the date of importation, the application may be filed after that time if it otherwise meets the above time requirements. The application shall be made with the port director having jurisdiction over the warehouse. No application for partial destruction shall be processed until the port director has had an opportunity to examine the merchandise to fix the percentage of injury and appraise the merchandise (19 CFR 158.25).

(b). Supporting Documentation - The application shall include as supporting evidence:

1. a declaration of the proprietor stating:

A. the time, place, and nature of the casualty;

B. that the merchandise, the subject of the claim, was in the warehouse; and

C. that it was totally destroyed without probability of recovery, or that it was partly destroyed or injured.

1. the entry summary and invoice covering the merchandise or certified copies of the foregoing;

2. a copy of the insurance appraiser's report, if any such report has been made.

The port director may waive the production of this evidence if the validity of the claim can otherwise be established to his or her satisfaction (19 CFR 158.27 and 158.28).

(c). Port Director's Decision - What constitutes a casualty is determinable from legal precedents or case law. Generally, a casualty is an accident, an unintended loss or damage incident. The port director shall notify the importer of the decision on the application (19 CFR 158.29). The proprietor shall also be notified. The importer may petition the Commissioner for review of the port director's decision (19 CFR 158.30(a)).

(d). Proprietor's Responsibilities - The proprietor shall report immediately to the port director any non-theft loss or damage in excess of 1 percent of the value of the merchandise in the entry, and confirm the report in writing on its own letterhead within 5 business days thereafter (19 CFR 19.12(d)(3)). However, the application for allowance pursuant to this section may be accepted as the proprietor's confirming report if it is submitted within the 5-day period, as specified in Section 8.4(a) BWM. The proprietor shall place a copy of the port director's

decision, and any decisions made on petitions, in its permit file folder and record them in its inventory and accounting records. The proprietor shall be relieved of liability due to the destruction or injury to the same extent as the importer.

8.7 Other Loss or Damage - There are various other kinds of loss, damage, or deterioration for which the importer and proprietor may be relieved of liability, and some for which they may not be relieved of liability. This section covers these miscellaneous loss and damage provisions. Losses due to manipulation or destruction at the request of the importer are covered in Sections 6.3 and 6.4 BWM, respectively.

(a). Destruction at Request of Consignee - Merchandise entered under bond pursuant to any provision of law (including entry for warehouse) may, upon payment of charges other than duty on the merchandise, be destroyed at the request and expense of the consignee within the bonded period. Upon such destruction, the entry shall be liquidated without payment of duty (6.3 BWM).

(b). Destruction or Damage Before Importation - An allowance may be made for loss, damage, or deterioration occurring before importation. (19 USC §1506; 19 CFR 158.11 and 158.12) Some loss or damage may be hidden within containers and not discovered until after deposit in a warehouse.

(c). Excessive Moisture or Other Impurities - An allowance may be granted for excess moisture or other impurities not usually found in the merchandise (19 USC §1507 and 19 CFR 158.13).

(d). Destruction or Condemnation of Prohibited Merchandise - Merchandise entered in good faith and denied admission may be destroyed pursuant to Government supervision (Secs. 19 USC §1558(a) and 19 CFR 158.41). An allowance in duties may be granted for perishable merchandise that has been condemned by health officials (19 USC §1506(2) and 19 CFR 158.14).

(e). Theft Loss - All thefts or suspected thefts from a warehouse shall be reported immediately by the proprietor to the port director and confirmed in writing within 5 business days thereafter (Sec. 8.4(a) BWM). A theft is a felony pursuant to both 18 USC §549 and 18 USC §659. Neither the importer nor the proprietor shall be relieved from liability for theft losses, except as noted in Section 8.2(d) BWM.

(f). Deliberate or Negligent Loss or Damage - There is no authority for relief from liability of either the importer or the proprietor for a loss or damage that does not amount to a casualty, e.g. a loss or damage due to a deliberate or negligent act by the proprietor or importer or a party pursuant to their control.

(g). Other Loss - There is no authority for relief from liability of either the importer or the proprietor for losses through spillage, leakage, evaporation, absorption, or similar natural causes not amounting to, or resulting from, a casualty. Neither is there any relief from liability for losses that cannot be accounted for or attributed to any factor for which relief may be granted.

8.8 Upward Adjustment in Liability - Some changes that occur while the merchandise is in the warehouse, such as manipulation, may result in an increase in the duty liability of the importer for the merchandise. These changes are not overages, and no entry shall be required. Examples of such changes are:

- a. Increase in rate of duty after entry;
- b. Increase in weight due to absorption of moisture, of merchandise subject to specific rate of duty based on weight; and
- c. Increase in value due to repairs, restoration, processing, or packing.

In such cases, the proprietor's liability is increased in an amount corresponding to the importer's increase in liability for duties.

8.9 Abandonment of Goods in Bonded Warehouse - The importer may at any time within 3 years from the date of importation (even though the warehouse period is 5 years) abandon any merchandise in a bonded warehouse to the Government, whereupon the duties shall be remitted or refunded. The merchandise may be abandoned only if it is not less than one entire package and is in the original package without having been repacked (19 USC §1563(b) and 19 CFR 158.43). The importer may abandon to the United States within 30 days after entry any imported merchandise representing five percent or more of the value of the merchandise in the same class covered by the invoice in which the item to be abandoned appears. The merchandise shall be delivered to a place designated by CBP within 30 days unless the merchandise is so far destroyed as to be undeliverable (19 USC §1506(1) and 19 CFR 158.42). There are thus two statutes covering abandonment that could be applicable to merchandise in a bonded warehouse. Abandonment pursuant to these statutes means the owner has specifically and in writing given up ownership of the merchandise and title has become vested in the U. S. Government. Thus, its status is different from unclaimed merchandise in G.O. status pursuant to 19 USC §1491 or merchandise held in a bonded warehouse more than 5 years pursuant to 19 USC §1559.

(a). Abandonment pursuant to 19 USC §1563(b) - Application for abandonment shall be made on a CBPF 3499 with the title modified to read "Application to Abandon Goods in Bond," with the written concurrence of the proprietor in the case of a public bonded warehouse (19 CFR 158.43(a) and (b)). Merchandise that has been withdrawn for consumption but not removed from the warehouse within the 3-year period may be abandoned pursuant to 19 USC §1563(b), whereupon duties may be refunded to the importer.

1. No Expense to Government - If the port director believes the abandonment will involve any expense to the government, or the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expense of sale, he may require, as a condition of approval of the application, that the importer deposit a sum sufficient to hold the Government harmless from any expense of abandonment. The sum will be placed in a special deposit account to meet the expenses of abandonment, and any excess will be refunded to the importer. The merchandise will be examined by CBP as needed to determine its condition for sale or acquisition by the

Government (19 CFR 158.43(c)).

2. Destruction Alternative - If the importer cannot abandon the merchandise because it is unwilling to deposit the above sum or because the 3-year period has expired, or for any other reason, it may elect to destroy the merchandise pursuant to 19 USC §1557(c) (See Sec. 6.3 BWM).

3. Port Director's Decision - If the conditions set forth in 19 USC §1563(b) and 19 CFR 158.43 are met, the port director may approve the application, make an allowance in duties for the importer, and so advise the importer and the proprietor in writing.

(b). Abandonment pursuant to 19 USC §1506(1) - The importer shall file a written notice of abandonment with the port director (no particular form or format is required) within 30 days after the date of the warehouse entry (19 CFR 158.42(b)). The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the port director. The merchandise shall be examined so as to verify the identification (19 CFR 158.42(d)) and also to determine the condition of the goods for sale or acquisition by the Government. The merchandise may be repacked to segregate the abandoned merchandise from the remainder of the shipment, or make it available for sale. Such packing costs shall be at the expense of the importer (19 CFR 158.42(e)). If the port director is satisfied that the requirements of 19 USC §1506(1) and 19 CFR 158.42 are met, he or she may approve the application, make an allowance in duties for the importer, and so notify both the importer and the proprietor in writing.

(c). Disposition of Abandoned Merchandise - This subsection covers merchandise abandoned pursuant to either 19 USC §§1506(1) or 1563(b). The title in abandoned merchandise is vested in the U.S. Government upon approval of the application by the port director. Its treatment is therefore different from unclaimed and involuntarily abandoned merchandise described in 19 CFR 127.11 and 127.12(a) and 10.2(b) BWM.

1. Disposition by CBP Contractor - Most abandoned merchandise is turned over to the CBP contractor for storage, sale, or other handling or disposition (See Sec. 10.2(a) BWM). Responsibility of the proprietor for the merchandise pursuant to its custodial bond will be relieved when the CBP contractor signs to accept responsibility pursuant to the national contract.

2. Worthless Merchandise - If the merchandise is worthless or the expense of sale will exceed the proceeds, the merchandise will not be turned over to the CBP contractor. The merchandise will be removed from the warehouse and from the control of the importer to assure that the merchandise will not be the subject of another application to abandon (19 CFR 158.44(c)). Such merchandise will be destroyed or otherwise disposed of under the supervision of CBPOs pursuant to the procedures in Section 10.8(c)(1) BWM.

(d). Responsibilities of Proprietor - The proprietor shall place a copy of the approved CBPF 3499 or the written notification of approval pursuant to 19 USC §1506(1) in the permit file folder. Any certification of destruction by CBPOs on a CBPF 4613 shall also be placed in the file folder. Removal or destruction of the merchandise shall also be recorded in the proprietor's

inventory and accounting records.

8.10 Arrearage or Insolvency of Importer or Transferee - If an importer or transferee defaults on payments owed to the proprietor or goes out of business, there is no authority under Federal law authorizing sale of merchandise in the bonded warehouse merely to satisfy debts owed to the proprietor. If the proprietor can persuade the importer or transferee to voluntarily abandon the merchandise to the Government, or chooses to await the end of the 5-year bond period, payment or partial payment of these debts may be made through the distribution of auction sale proceeds (See Sec. 10.8(b)(1) BWM).

PART 9 - LIQUIDATION OF WAREHOUSE ENTRIES

9.1 General - The appropriate CBPO shall fix the amount of duty to be paid on merchandise that has been entered, determine any increased or additional duties or excess of duties deposited, and liquidate the entry of such merchandise (19 USC §500(c) and (d)). "Liquidation" is the final determination of admissibility and the computation or ascertainment of the duties, fees, taxes and/or drawback accruing on an entry. Essentially, it is CBP's final decision on all aspects of an entry. The general procedures governing liquidation are found in 19 CFR Part 159. This part of the BWM covers only the liquidation of warehouse entries.

9.2 Liquidation by Port Office - Whenever a reference in this part is made to liquidation requirements, it refers to the unit charged by the Port Office with liquidation responsibilities.

9.3 Preparation for Liquidation - Liquidation of a warehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the 5-year bonded period by withdrawal, abandonment, or destruction; or until the bonded period has expired if the merchandise has not been accounted for before that time (19 CFR 159.52). The Automated Commercial System (ACS) is programmed so that liquidation does not automatically occur in the system until 5 years after entry. The warehouse proprietor shall file the permit file folder with CBP within 30 calendar days after final withdrawal (19 CFR 19.12(d)(4)), or when requested by CBP in the case of merchandise in an entry that has not been withdrawn during the 5-year bonded period.

(a). Control Procedure - The port director will maintain control procedures to assure that (1) CBP will promptly request the permit file folder at the end of the bonded period if not all of the merchandise has yet been withdrawn, (2) the proprietor will timely file the permit file folder when the last withdrawal is filed, and (3) the file folder and contents are checked to see whether they are in apparent good order for liquidation.

9.4 Time Limit for Liquidation - Except when an extension has been granted or liquidation has been suspended pursuant to 19 CFR 159.12, a warehouse entry not liquidated within 1 year after final withdrawal of all merchandise covered by the entry will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer at the time of filing a withdrawal for consumption in proper form with estimated duties attached (19 USC §1504 and 19 CFR 159.11). Notice of liquidation will be given by CBP to the importer on CBPF 4333, and where possible on CBPF 4333-A, as provided in 19 CFR 159.9 and 159.10. Notices of extension will be given promptly by CBP to the importer and will set forth the reasons for the extension (19 CFR 159.12(b)).

9.5 Liquidation Information on Withdrawal for Transportation - Information as to estimate duties and taxes shall be transmitted on withdrawals for transportation, as specified in 19 CFR 144.36(d) and 7.6(d) BWM. When the foregoing information has been changed upon final liquidation, the port director at the port of the original warehouse entry will advise the port director at the port of entry where the rewarehouse entry will be filed on a copy of CBPF 7512 of the applicable changes so they can be applied to the liquidation of the re-warehouse entry. The port director at the port of original entry may omit transmittal of the statement of liquidation

when:

(a) The merchandise is excluded from the original warehouse entry pursuant to 19 CFR 159.7(a); (see Sec. 9.6(a) BWM);

(b) All of the merchandise has been withdrawn from the re-warehouse entry for exportation, vessel or aircraft supply, or other duty-free use,

(c) The merchandise is manipulated at the port of re-warehousing rendering the statement of liquidation unnecessary;

(d) Duties have already been ascertained at the time of withdrawal for transportation;

9.6 Liquidation of Re-Warehouse Entries - The liquidation of the original warehouse entry will be followed in determining the liability for duties on a re-warehouse entry except in the following cases:

(b). Merchandise Excluded from Liquidation - Merchandise listed in this paragraph that is withdrawn for transportation to another port for re-warehousing shall be excluded from the original warehouse entry. Liability shall be determined by liquidation of the re-warehouse entry in the port where the merchandise is withdrawn for consumption or exportation. Liquidation of the re-warehouse entry may precede liquidation of the original entry.

1. Alcoholic beverages provided for in Headings 2203 through 2208, HTS, and subject to IRS tax;
2. Cigars, cigarettes, and cigarette papers and tubes subject to IRS tax;
3. Tariff-rate quota merchandise; and
4. Wool or hair subject to duty at a rate per clean kilogram pursuant to Chapter 51, HTS.

(c). Change in Law - When a rate of duty or tax is changed by an Act of Congress or a Presidential Proclamation, any liquidation of a warehouse entry required by the change in rate will be made in the port in which the merchandise is held in CBP custody on the effective date of the change.

(d). Shortage or Irregular Delivery - When there is a shortage, irregular delivery or non-delivery pursuant to the original withdrawal for transportation to another port for re-warehousing, or in other cases where the port director at the port of re-warehousing has reason to believe that the original warehouse entry should not be followed, he or she shall make an appropriate adjustment in the amount of duties to be assessed pursuant to the re-warehouse entry (19 CFR 159.7).

9.7 Quantity on Which Duties are Based - Where duties are based on quantity, such duties shall be based on the quantity at the time of importation, except:

1. Manipulation in Warehouse - When merchandise has been manipulated, entries shall be liquidated based on the quantity of the merchandise in its manipulated condition (19 CFR 159.21(a)).

2. Alcoholic Beverages - Both duties and taxes are assessed only on the quantities withdrawn for consumption (19 CFR 159.21(b)).

3. Tobacco Products - CBP duties on cigars, cigarettes, and cigarette papers and tubes are assessed on quantities imported, but IRS taxes are assessed only on quantities withdrawn for consumption (19 CFR 159.21(c)).

9.8 Assessment of Liquidated Damages - The importer is liable for duties on any merchandise that cannot be accounted for upon liquidation, and the proprietor may also be liable for liquidated damages for such merchandise (See Sec. 8.2(d) BWM). The proprietor may also be liable for any failure found upon liquidation to comply with the requirements of Section 19 CFR 19.12(d)(4), e.g., failure to include all documents in the permit file folder.

9.9 Liability of Importer After Liquidation - Where an obligation arose pursuant to the Importation and Entry Bond (19 CFR 113.62), this obligation continues to run until either it is fulfilled or the statute of limitations has run out. This could happen, for instance, when merchandise which was withdrawn for exportation is diverted into the U.S. commerce after the entry was liquidated. In such cases, CBP has the authority pursuant to 19 CFR 113.62(h) and (j) to assess liquidated damages against the importer or transferee, although the entry has already been liquidated.

9.10 Liability of Importer After Expiration of Bonded Period - The principal on the Importation and Entry Bond agrees to pay any duties and taxes found to be due on any of the merchandise remaining in the warehouse at the expiration of the 5-year bonded period (19 CFR 113.62(a)(2)(i)). If the proceeds of sale of warehoused merchandise deemed involuntarily abandoned and subsequently sold at auction are insufficient to pay the duties, the deficiency will be collected pursuant to the Importation and Entry Bond (19 CFR 127.37(a)).

PART 10 - STORAGE AND DISPOSITION OF GENERAL ORDER (G.O.) MERCHANDISE

10.1 General - When entry of any imported merchandise cannot be made within the time limit provided by law or regulations, or whenever the entry is incomplete, or whenever entry cannot be made, or when the entry is not correctly or legally invoiced, the merchandise shall be sent to a bonded warehouse or public store at the risk and expense of the consignee until entry is made or completed (19 USC §1490(a)). At the request of the consignee, or of the owner or master of the vessel or person in charge of the vehicle in which the merchandise is imported, the merchandise may be held in a Class 11 (General Order/G.O.) bonded warehouse at the risk and expense of the consignee until entry is made (19 USC §1490(b)). Any merchandise remaining in CBP custody for 6 months without all estimated duties and storage and other charges having been paid shall be ordered to auction by the port director. Sales may be conducted by the port director, any employee designated by him or by the public auctioneer. (19 USC §1491(a)). However, merchandise that remains in a bonded warehouse at the end of the 5-year bonded period is considered abandoned and shall be sold at auction forthwith (19 USC §1559). A carrier, trucker or container freight station (CFS) must notify CBP and a G.O. bonded warehouse of the presence of un-entered merchandise or baggage remaining at the place of unloading or arrival beyond 15 calendar days. If no G.O. warehouse is available, a Class 3, 4, or 5 bonded warehouse that has been certified by the port director as meeting the requirements of a G.O. bonded warehouse may be used for the storage of G.O. merchandise (19 CFR 19.1(a) and 127.13(a)).

10.2 Designation of General Order (G.O) Warehouse - A G.O. bonded warehouse will be designated by the port director pursuant to an approved application (19 CFR 19.2(a)). All new applications for status as a G.O. warehouse may have to meet the port directors' requirements for minimum space as well as the requirement for automation of inventory and record keeping. The port director may also require an applicant to submit fingerprints on an FD 258 or electronically at the time of filing the application (19 CFR 19.2(f)). In the case of a business entity, the port director may require the fingerprints of all employees of the entity (19 CFR 19.2(d)).

10.3 Notification Requirements - There are various notifications required when merchandise becomes eligible for G.O status.

(a). Direct Arrival - Any merchandise or baggage landed by a carrier shall be allowed to remain at the place of unloading or in custody of an authorized party for 15 calendar days after landing or receipt of permit. No later than 20 calendar days after landing the carrier shall notify CBP of any merchandise for which entry has not been made. Such notification shall be made in writing or by any appropriate CBP authorized electronic data interchange system. Failure to notify CBP in a timely manner may result in assessment of a penalty, per bill of lading, up to \$1000 or the value of the merchandise if less than \$1000 (19 CFR 4.37(a)). No mitigation will be afforded if notification is not received or the violation is discovered by CBP.

(b). Indirect Arrival - Any merchandise or baggage taken into custody pursuant to a permit to transfer shall be allowed to remain at the place of unloading or in custody of an authorized party for 15 calendar days after receipt of merchandise. No later than 20 calendar days after

receipt of merchandise or arrival in-bond the carrier shall notify CBP of any merchandise for which entry has not been made. Failure to notify CBP in a timely manner may result in the assessment of liquidated damages of \$1000 per bill of lading (19 CFR 4.37, 122.50 and 123.10). No mitigation will be afforded if notification is not received or the violation is discovered by CBP.

(c). Notification of G.O. Warehouse - In addition to notifying CBP, the carrier or bonded party shall notify a G.O. bonded warehouse proprietor (or any other bonded warehouse certified by the port director for storage of G.O.) of the presence of G.O. merchandise within 20 calendar days. The bonded warehouse proprietor is responsible to arrange for the transportation and storage of this merchandise. Failure to notify the G.O. bonded warehouse in a timely manner may result in the assessment of liquidated damages of \$1000 per bill of lading (19 CFR 4.37, 122.50 and 123.10).

(d). Acceptance by Class 11 Warehouse - An approved G.O. bonded warehouse is required to transport and store G.O. merchandise within 5 days from receipt of notification unless the port director determines that the merchandise requires special handling or storage. Failure to take possession of G.O. merchandise may result in assessment of liquidated damages pursuant to the terms and conditions of the proprietor's bond (19 CFR 4.37, 122.50 and 123.10). No mitigation will be afforded if possession is never taken or the violation is discovered by CBP. If merchandise requires special handling or storage the port director shall direct storage by the carrier or other appropriate means (19 CFR 4.37(f)). In the event that the class 11 warehouse cannot accept the merchandise because it is required by law to be exported or destroyed, the carrier or transferee will be responsible, pursuant to bond, for destroying or exporting the merchandise in a manner authorized by CBP Regulations (19 CFR 113.63(c)(3)).

10.4 Transfer to and Receipt into Warehouse – Merchandise shall be sent to a bonded warehouse and notification shall be made pursuant to the guidelines in 19.3 BWM.

(a) Acceptance and Receipt of Merchandise - The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier pursuant to a CBP authorized permit to transfer or in-bond entry) is responsible for preparing a CBPF 6043 (Delivery Ticket) or an electronic equivalent as authorized by CBP, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or any other party to whom custody of the merchandise was transferred by the carrier pursuant to a CBP authorized permit to transfer or in-bond entry). A joint determination shall be made by the proprietor and the bonded carrier as to the quantity and condition of merchandise so delivered to the warehouse. Any discrepancies in condition or quantity shall be reported to the port director within 2 business days of agreement (19 CFR 19.9 and 8.3 BWM). Upon receipt, the proprietor shall carry out the procedures as set forth in Section 4.15 BWM. However, the block in the upper right hand corner of the CBPF 6043 will contain the G.O. number, rather than the warehouse entry number.

(b). Liability of Carrier - If the carrier or transferee fails to relinquish custody of the merchandise to a G.O. bonded warehouse (or equivalent) the carrier or transferee may be assessed liquidated damages pursuant to the terms of their bond (19 CFR 122.50 and 123.10). Liens should be submitted on a CBPF 3485, signed and certified by the authorized agent of the

carrier, at the time the G.O. bonded warehouse receives the merchandise (19 CFR 141.112(b)). Carriers and transferees are not authorized to delay delivery of freight to bonded warehouses if freight charges have not been satisfied. Payment of liens is provided for from the proceeds of the sale (19 CFR 127.31).

(c). Liability of Proprietor - The proprietor shall assume liability for G.O. merchandise in its condition and quantity as set forth on the CBPF 6043, except as adjusted by joint agreement of the proprietor and the bonded carrier (19 CFR 19.9(a) and 8.3 BWM).

(d). Special Circumstances - If merchandise is left aboard a vessel from a foreign port more than 25 days after report of arrival, the port director may order the vessel unladen and the merchandise sent to a G.O. bonded warehouse at the risk and expense of the owners of the merchandise (19 CFR 4.37(g)). Merchandise abandoned to CBP by the consignee or owner/master of conveyance, per 19 USC §1490(b), shall be sent to a Class 11 warehouse within 1 day after entry of the conveyance at the risk and expense of the owners of the merchandise (19 CFR 4.37(h)).

10.5 Responsibility for Merchandise in Warehouse - While G.O. merchandise is stored in the warehouse, the proprietor shall carry out all the recordkeeping, security, and storage requirements of 19 CFR 19.4 as they apply to such merchandise. CBP will conduct compliance reviews and audits as provided in Part 2 BWM to verify the proprietor's compliance with those requirements.

10.6 CBP Storage and Sales Contracts - CBP has signed nationwide contracts with a private firm for (1) the storage and disposition of seized and abandoned merchandise and (2) the sale of unclaimed and involuntarily abandoned merchandise. These contracts affect the application of Customs laws and regulations to bonded warehouses.

(a) Contract for Storage and Disposition of Seized and Abandoned Property - Pursuant to this contract, any merchandise which is seized under the authority of any U.S. law or which is voluntarily abandoned to the U.S. Government is turned over to the CBP contractor for storage, sale, or other handling or disposition according to law (See 19 CFR 127.12(b)). Most of this merchandise is turned over directly to the contractor and never enters a bonded warehouse. If it is already in a bonded warehouse at the time of seizure or abandonment, it will be turned over to the contractor pursuant to the provisions of the contract. The CBP contractor may subcontract with a proprietor for the storage of merchandise pursuant to the contract. However, merchandise that has been turned over to the contractor shall be stored separately from other bonded merchandise, since different rules and procedures cover it. The warehouse proprietor is responsible to CBP for seized and abandoned merchandise through the national contractor pursuant to the terms of the national contract. The warehouse proprietor is responsible to CBP for other bonded merchandise pursuant to the basic conditions of the custodial bond (see 19 CFR 113.63).

(b) Contract for Sale of Unclaimed and Involuntarily Abandoned Merchandise Pursuant to this contract, any merchandise which is unclaimed pursuant to 19 CFR 127.11 or involuntarily abandoned pursuant to 19 CFR 127.12(a) may be turned over to the contractor for

sale. The proprietor remains responsible for the storage of this merchandise until the appropriate party signs for removal from the G.O. warehouse or the merchandise is destroyed in the warehouse. Merchandise which was entered into a bonded warehouse but remains in the warehouse for 5 years after importation shall be turned over to the contractor for immediate sale pursuant to the procedures in Section 10.7(b) BWM.

10.7 Removal from Bonded Warehouse – G.O. merchandise may be removed from a Class 11 warehouse for entry, sale, or destruction.

(a). Release for Entry – G.O. merchandise may be released to the importer upon delivery authorization by CBP. CBP may inspect or examine the merchandise before it authorizes delivery. The importer shall present to the proprietor an entry permit on CBPF 3461, CBPF 7501, or other appropriate CBP form. Before any entry for G.O. merchandise is accepted, the port director shall assure that all charges due (including reimbursement of cartage charges to the warehouse) have been paid and any liens have been satisfied (19 CFR 141.112 and 144.32(c)) and the carrier and the proprietor has issued a release (19 CFR 141.111). When G.O. merchandise is to be conveyed to a place designated by the port director for examination, such as a CES, cartage is at the expense of the importer (See Sec. 4.10(a) BWM). Reimbursement of the cost of the cartage either to or from the warehouse, if previously paid by CBP, will be collected from the importer prior to release of the merchandise from CBP custody (19 CFR 125.13).

(b). Release for Sale - Articles subject to sale include:

1. unclaimed merchandise which remains in CBP custody for 6 months after importation (19 CFR 127.11);
2. unclaimed merchandise subject to depreciation which may be sold before the above 6 month period (19 CFR 127.28(d) and;
3. Involuntarily abandoned merchandise (19 CFR 127.12).

G.O. merchandise may be eligible for sale if duties are paid but storage charges and liens have not been satisfied. Sale procedures are set forth in 19 CFR Part 127 Subpart C. Merchandise for sale at auction may be released by the proprietor for transfer to the place of sale upon presentation by the CBP contractor or cartman of both a CBPF 5251 and CBPF 6043 (19 CFR 19.9). If the merchandise is to be retained at the G.O. warehouse for sale, the CBP contractor will present the CBPF 5251 to the proprietor as the order of sale. The proprietor may release the merchandise to the purchaser of the goods only upon written order of the CBP contractor when the purchase price has been paid. There is no specific CBP form for this written order. G.O. merchandise that has been ordered to sale may be entered or withdrawn for consumption at any time before the sale (19 CFR 127.14(b)).

1. Proceeds from Sale - Sales, storage and other expenses incurred by the proprietor shall be paid from the proceeds of G.O. auction sales (19 CFR 127.13(b)), as specified in 19 CFR 127.31 and 127.32. Claims by importers for surplus proceeds shall be made as specified in 19 CFR 127.36. If the proceeds of sale are insufficient to pay the duties, the port director will take

further action to collect the duties, as specified in 19 CFR 127.37.

(c). Release for Destruction - Merchandise designated by the port director for destruction and not for sale, will not be transferred to the CBP contractor for the purpose of destruction. Also, merchandise that is known to be unsalable will not be transferred to the contractor. Finally, if in its initial screening of the merchandise, the contractor determines that sale would not be cost-effective, the contractor will so inform the port director. In each of these cases, the proprietor must assume responsibility pursuant to bond, including the expense, for destruction of the merchandise (19 CFR 127.14(a)(2)). Before destroying the merchandise the proprietor must first make a reasonable effort to identify and notify the owner regarding the intended destruction. When the owner is identified, notice of destruction will be provided on a CBPF 5251, appropriately modified, or other similar CBP document or electronic equivalent, at least 30 calendar days prior to destruction. G.O. merchandise that has been offered for sale but not sold is to be included in the next sale. If the port director is satisfied that the merchandise is unsalable or has no commercial value, it shall be destroyed (19 CFR 127.29). At no time does ownership of the merchandise revert to the warehouse proprietor.

(d). Government Title to G.O. Merchandise - At the end of the 6-month period instead of allowing merchandise to go to sale, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may notify all interested parties that title to this merchandise will be considered vesting in the U.S., free and clear of any liens or encumbrances, as of the 30th day after the date of notice. The owner of the merchandise may reclaim the merchandise by filing entry and paying all expenses, duties and fees that may have accrued (19 CFR 127.41(a)). The notice will consist of a CBPF 5251 or equivalent, sent to the importer (if known), the consignee (if known), the shipper (if consignee and importer can not be ascertained), and any other known interested parties (19 CFR 127.41(b)). The merchandise will be appraised in accordance with 19 USC §1401a.

1. Disposition of Merchandise Owned by the Government - The merchandise may be retained by CBP for its official use or it may be transferred to any other Federal, state or local agency. It may also be destroyed or disposed of otherwise. All transfer and storage charges or expenses will be paid by the receiving agency (19 CFR 127.42).

2. Petition for Surplus Proceeds had Merchandise Been Sold - Any party who can satisfactorily establish title or substantial interest in this merchandise may file a petition for the surplus proceeds that would have been paid out had the merchandise been sold. The petition must be filed with the port director that initiated the action within 30 calendar days of the vesting of title and no more than 90 calendar days (if proven that notice was not received). The petitioner must be able to provide documentation of their interest or title and if applicable must provide proof that they did not receive notice of the vesting of the title with the U.S. If the petitioner can prove their claim to the satisfaction of the port director, they will be paid the amount they would have received had the merchandise gone to sale. The value will be determined by the appraisal. The amount paid will be final and conclusive. If the claim is denied it will be forwarded to the Assistant Commissioner, Office of Administration, for instructions. The decision of the Assistant Commissioner, Office of Administration, will be final and conclusive on all parties (19 CFR 127.43).

(e). Action by Proprietor Upon Removal - The proprietor shall obtain the signature of the cartman or other person who receives the merchandise on the form or document prescribed in this section for release of the merchandise or article, and shall place the signed permit to release in the permit file folder. The proprietor will be relieved from liability for the merchandise in the quantity and condition noted on the permit as determined jointly by the proprietor and the person who receives the merchandise. Any discrepancy shall be noted on the permit and reported to the port director upon agreement. A copy of the permit containing the discrepancy report shall be sent to the port director within 2 business days after agreement (19 CFR 19.9). The proprietor will also be relieved from liability for merchandise that has been destroyed in the warehouse pursuant to CBP order.

(f). Action Upon Final Removal from Lot - When the last G.O. merchandise in a lot has been removed from the bonded warehouse, or sold or destroyed in the warehouse; the proprietor shall review the permit file folder and transmit it to the port director within 30 business days after final removal. The port director may grant an exemption to the submission requirement allowing a formal notification of final withdrawal (19 CFR 19.12(d)(4)(iv)). The port director will review the file to see that all U.S. laws and regulations have been complied with, and take action appropriate to any violations or defaults.

PART 11 - ALCOHOL AND ALCOHOLIC BEVERAGES

11.1 General - This part covers the entry, handling, and removal of ethyl alcohol and alcohol products, principally beverages, in bonded warehouses. Bonded warehouses are widely used for the storage of alcoholic beverages because they may be deposited therein to postpone the payment of IRC taxes, which are very high in comparison with CBP duties. Many of the regulatory requirements of warehouse proprietors and importers concerning alcoholic beverages are found, not in the Customs Regulations, but rather in the Alcohol and Tobacco Tax & Trade Bureau (“TTB”) regulations at Title 27, Code of Federal Regulations. It is important to note that in January of 2003, TTB assumed responsibility for enforcing these regulations from the Bureau of Alcohol Tobacco, Firearms and Explosives. Laws and regulations concerning alcoholic beverages contain some significant exceptions from normal CBP practices. Examples:

- (a) Domestic spirits, wines, and beer may, pursuant to certain circumstances, be placed in bonded warehouses;
- (b) IRC taxes are payable on alcoholic beverages only on the amount withdrawn, not on the amount entered;
- (c) Payment of IRC taxes on imported alcoholic beverages need not be paid upon withdrawal for consumption, but rather may be deferred for up to 14 days after the last day of the semi-monthly period, during which the withdrawal occurs;
- (d) Payment of IRC tax on alcoholic beverages removed for transportation to another warehouse is due within 14 days after the last day of the semi-monthly period after removal from first warehouse, unless it is destined for export. (26 USC. §5061(d), also see Sec. 7.5(c) BWM)

This Part covers both the CBP and TTB regulations as they refer to the CBP warehousing of alcohol and alcohol products, except those involving Class 6 warehouses, which are covered in Part 13.

11.2 Entry Into Warehouse - The provisions of Part 4, BWM, apply to the entry of alcoholic beverages, except to the extent they are amended by this section.

(a). Basic Permit Requirement- No person, except pursuant to a basic permit on TTB Form 5100.24, shall engage in the business of importing distilled spirits, wine, or malt beverages. (27 CFR 1.20) The procedures for obtaining a basic permit are found in 27 CFR Part 1.

(b). Bulk Spirits for Non-industrial Use – No person shall import distilled spirits in bulk for non-industrial use except for sale to or use by:

1. Proprietors of TTB bonded distilled spirits plants for redistillation,

warehousing, or processing;

2. Persons holding permits as producers and blenders of wines receiving bulk alcohol or brandy for addition to wines;

3. Any agency of the United States or any state government or political subdivision thereof for warehousing and bottling;

4. Proprietors of Class 8 warehouses for warehousing and bottling. (27 CFR 1.81)

Industrial and non-industrial uses are defined in 27 CFR Part 1. "In bulk" means distilled spirits in containers having a capacity in excess of one wine gallon (27 CFR 1.10).

(c). Bulk Wines - Wine imported or brought into the United States in bulk containers (more than 60 liters) may be withdrawn from CBP custody and transferred in such bulk containers to the premises of a bonded wine cellar without payment of the IRS tax imposed on such wine. The proprietor of the bonded wine cellar to which such wine is transferred shall become liable for the tax on the wine withdrawn from CBP custody pursuant to this section upon release of the wine from CBP custody, and the importer, or the person bringing such wine into the United States, shall thereupon be relieved of the liability for such tax (26 USC §5364).

(d). Bulk Beer - Beer imported or brought into the United States in bulk containers (more than 31 gallons) may be withdrawn from CBP custody and transferred in such bulk containers to the premises of a brewery without payment of the IRC tax imposed on such beer. The proprietor of the brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from CBP custody upon release of the beer from CBP custody and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for the tax (26 USC §5418).

(e). Entry of Imported Alcohol Products - The provisions of Section 11.2(a) - (d) BWM will be administered by the port director upon entry for warehouse, rather than upon withdrawal. The port director may require a copy from the importer of the basic permit or a statement in connection with non-industrial use to see that these requirements have been satisfied. However, CBP will usually consider presentation of a Certificate of Label Approval (see Sec. 11.4(h) BWM) as evidence of an importer's Basic Permit. CBP will accept an entry only under the name and bond of the permit holder, not in the name of a customhouse broker. The port director may waive the basic permit requirement when satisfied that alcoholic beverages are for personal use or for experimental use in making analyses, test, or comparisons (19 CFR 12.37). Entry shall be made in the proper subheading and metric unit of quantity required by the HTS; however, the entry must also show the number of proof gallons, wine gallons, or barrels, as appropriate, on which IRC taxes would be assessed for the merchandise (See Sec. 11.4(g) BWM). Bottled alcoholic beverages will be examined by CBP pursuant to selective examination procedures for compliance with labeling, certificate of origin, standard or nonstandard fill, and similar requirements pursuant to 27 CFR 4.40 through 4.46 (wine), 5.51 through 5.53 (distilled spirits), and 7.30 and 7.31 (malt beverages). See also Section 11.4(h) BWM. Entry will not be denied for failure to meet these requirements, since they may be met

while the merchandise is in the warehouse. Canadian landing certificates will be issued to the importer by CBP as provided in MS 3255-02.

(f). Entry of Domestic Distilled Spirits, Wines, and Beer. - Distilled spirits, wine and beer on which IRC taxes have not been paid may be withdrawn from a TTB-bonded distilled spirits plant, bonded wine cellar, or brewery respectively, without payment of tax, for transfer (for the purpose of storage and exportation) to a bonded warehouse from which these alcohol beverages may be exported (26 USC §§5214(a)(9), 5362(c)(4), 5053(g)). The same alcohol beverages may also be withdrawn from a TTB-bonded distilled spirits plant, bonded wine cellar, or brewery, without payment of tax, for transfer to a CBP bonded warehouse for entry pending withdrawal for consumption in the United States for the official or family use of foreign governments, organizations, and individuals who are entitled to withdraw imported alcohol beverages free of tax. Alcohol beverages so entered may also be withdrawn for domestic use, in which event, they shall be treated as American goods exported and returned (26 USC §§5066, 5362, 5053(g)).

"Domestic", for the purposes of these statutes, means not only domestically produced spirits, but also imported spirits that were previously entered and duty-paid and transferred to TTB bond and controls.

1. Transfer from TTB-Bonded Facilities-Distilled spirits, wine, or beer may be withdrawn from a TTB-bonded distilled spirits plant, bonded wine cellar, or brewery, respectively, for transfer to a CBP bonded warehouse only pursuant to the regulations and procedures found in 27 CFR Part 252. Upon removal from those premises, one of the following TTB forms will be sent to the proprietor of the receiving bonded warehouse:

- (i) 5100.11 – non-tax paid distilled spirits, wines,
- (ii) 1689 (5130.12) – non-tax paid beer
- (iii) 5110.30 - domestic tax paid distilled spirits exported with benefit of TTB drawback
- (iv) 1582A (5120.24) - tax paid wine exported with benefit of drawback
- (v) 1582B (5130.6) - tax paid beer exported with benefit of drawback

Containers of spirits covered by these forms must generally be marked "EXPORT" according to applicable provisions of 27 CFR Part 28. However, exporters may apply to the TTB for a variance pursuant to 27 CFR 28.20 that if approved, would allow an exemption from the "Export" marking requirement for certain types of exportation or transfer. A CBP bonded carrier need not transport the spirits. They remain under TTB bond until proper execution by a warehouse proprietor on the appropriate form evidencing that the merchandise has been deposited in a bonded warehouse (27 CFR 28.70).

2. Entry Filing and Processing - Distilled spirits, wine, or beer transferred may be deposited in a bonded warehouse upon acceptance of a warehouse entry on CBPF 7501, Code 21, accompanied by a properly completed copy of the appropriate TTB form and CBP authorization of transfer to the warehouse. A rewarehouse entry will not be accepted for the merchandise, except in the case of transfers of such merchandise from another warehouse. The warehouse entry must bear a notation that clearly describes the merchandise as non tax-paid domestic distilled spirits, wines, or beer, or as tax paid domestic distilled spirits for sale to diplomats with benefit of drawback, as the case may be. The notation must also cite the appropriate statute pursuant under which the transfer has taken place:

Non tax-paid spirits for sale to diplomats	26 USC §§5214(a)(4) and 5066
Non tax-paid spirits for storage pending exportation	26 USC §5214(a)(9)
Tax-paid spirits for sale to diplomats	26 USC §§5062(b) and 5066
Non tax-paid wine for storage pending exportation	26 USC §5362(c)(4)
Non tax-paid wine for sale to diplomats	26 USC §§ 5362(c)(4) and 5362(e)
Non tax-paid beer for storage pending exportation	26 USC §5053(g)
Non tax-paid beer for sale to diplomats	26 USC §5053(g)

(i). Alternative Exportation or Sale to Diplomats - However, spirits, wines, or beers which will be either exported or sold to diplomats may not be withdrawn for domestic use pursuant to 26 USC §§5066(c), 5362(e)(2), or 5053(g). An exporter who wishes to exercise this option, and thereby be authorized to mix those products in storage per Section 11.3(e) BWM, shall cite as authority on CBPF 7501: 26 USC §5214(a)(4), §5214(a)(9) and §5066 for distilled spirits, 26 USC §5362(c)(4) and (e) for wines, and §5053(g) for beer and provide the following certification with the entry:

"Distilled spirits, wine or beer covered by this entry will not be withdrawn for domestic use pursuant to 26 USC §§5066(c), 5362(e)(2), or 5053(g) or transferred to another bonded warehouse for withdrawal or domestic consumption, except that if such products are exported or sold to diplomats they may be mixed in storage only as authorized pursuant to 26 USC §§5066, 5214(a)(9), and 5214(a)(4), and/or 5362(c)(4) and 5362(e) and/or 5053(g). merchandise covered by this entry"

This certification may be filed in blanket form for all transfers of domestic distilled spirits and/or wines entered by the same importer into the same bonded warehouse for a period of up to 1 year.

(ii). CBP Examination-The shipment may be delivered directly to the bonded warehouse, but must be held there intact pending delivery authorization. (See Sec. 4.10 BWM) The merchandise is subject to CBP examination and delivery authorization in the same manner as imported merchandise. If examination discloses any evidence of fraud, the merchandise will be detained and the port director will make a full report to the appropriate TTB official pursuant to 27 CFR 28.265. The detained merchandise will not be authorized for delivery to the bonded warehouse until the port director has been so advised by the appropriate TTB official.

(iii). Entry Processing-The warehouse entry will be processed and liquidated in the same manner as any other warehouse entry, except that no statistical copy of the CBPF 7501 will be required or accepted for forwarding to the U.S. Census Bureau

(3). Receipt into Warehouse - 27 CFR 28.286 specifies that a CBPO will note on each copy of the appropriate TTB form (5100.11 or 1689/5130.12) any discrepancy between the merchandise described on the form and that actually received at the bonded warehouse. However, the warehouse proprietor shall complete the receipt portion of the form in lieu of a CBPO, forward one copy to TTB, and file one copy in the proprietor's files (ATF Industry Circular 2000-2). Domestic distilled spirits, wine or beer transferred to a bonded warehouse will be deemed exported, for the purposes of 27 CFR, upon receipt in the warehouse. However, the merchandise is not considered exported for CBP drawback purposes (LD 80-117). Gauging of bulk distilled spirits by the proprietor upon receipt will be performed according to the procedures of 27 CFR Part 30 (Gauging Manual), except as provided in Section 11.7(b) BWM.

(g). Transfer of Puerto Rican Spirits and Wines - There is no authority for the transfer of spirits and wines produced in Puerto Rico to a bonded warehouse. Puerto Rico is not within the United States for the purposes of the IRC Code and therefore the privileges of 26 USC §§5066, 5214, and 5362 do not apply. Neither is the merchandise imported for the purposes of Title 19, U.S. Code so 19 USC §§1555 and 1557 do not apply. Therefore, such transfers are prohibited.

11.3 Storage and Handling in Warehouse - The provisions of Part 6 BWM apply to the storage and handling of alcohol and alcohol products in bonded warehouses, except to the extent they are amended by this section.

(a). Bottling Requirement - Bottling of imported distilled spirits in Class 8 warehouses shall not be permitted unless the proprietor has obtained a basic permit from TTB (19 CFR 12.37 and 27 CFR 1.21). There is no provision of law authorizing the bottling of wine or beer in a

bonded warehouse. Imported distilled spirits may be bottled in either imported or domestic containers, so long as the containers meet the requirements of 27 CFR Part 27, Subpart N, upon withdrawal for consumption (27 CFR 251.121).

(b). Manipulation for Packaging, Marking, and Closure Purposes-Imported distilled spirits, wine, and beer may be manipulated in bonded warehouses so as to bring them into compliance with the packaging, marking, and closure requirements of 27 CFR Parts 4, 5, 7, and 27 for withdrawal from the warehouse. Domestic distilled spirits, wines or beer transferred to bonded warehouses shall not be manipulated therein to remove or change markings or stamps affixed in distilled spirits plants, bonded wine cellars, or breweries for exportation (See 27 CFR 28.101 through 28.103 (distilled spirits), 28.123 (wines), 28.144 (beer)). The only exception to these requirements is that spirits, wines and beer transferred to a bonded warehouse for diplomatic use, but withdrawn for domestic use pursuant to 26 USC §§5066(c), 5362(e)(2), or 5053(g) may be manipulated so as to meet the packaging, marking, and closure requirements for imported spirits or wines withdrawn for consumption (See Sec. 11.5(b) BWM).

(c). Reduction in Alcohol Content-Distilled spirits or wine shall not be reduced in alcohol content in a CBP bonded warehouse other than a Class 6 warehouse, since this process is deemed to constitute a manufacturing process (19 USC §1311).

(d). Recordkeeping and Reporting Requirements-Importers of distilled spirits, wines, and beer are required by TTB to maintain records and make reports as specified in 27 CFR Part 27, Subpart I. Port directors have no responsibility to enforce these requirements. However, records retained pursuant to that subpart may be examined by CBPOs (27 CFR 251.137).

(e). Segregation of Domestic Spirits, Wines, and Beer for Diplomatic Use-Except for alcohol beverages entered for storage pursuant to the alternative exportation or sale to diplomats pursuant to Section 11.2(f)(2)(i) BWM, alcohol beverages destined for sale to diplomats shall be segregated from alcohol beverages destined for exportation, since their eligibility for withdrawal is different. (See Sec. 11.5(a) and (b) BWM) In the case of warehouses which account for merchandise pursuant to FIFO per Section 6.6 BWM, CBP does not regard types of alcohol beverages destined for sale to diplomats as being fungible with identical types of alcohol beverages destined for exportation. Although they may be identical in marking and appearance, they must be accounted for and handled under separate inventory categories and identified with different unique identifiers. However, identical types of alcohol beverages entered for storage for either exportation or sale to diplomats per Section 11.2(f)(2)(i) BWM are regarded as being fungible pursuant to FIFO inventory accounting and need not be segregated one from another within that type.

(f). Gauging of Bulk Distilled Spirits - Any gauging done of bulk distilled spirits by the proprietor to carry out its responsibilities pursuant to 19 CFR 19.12 will be performed according to the procedures of 27 CFR Part 30 (Gauging Manual), except as provided in Section 11.7(b) BWM.

11.4 Withdrawal for Consumption -The provisions of Section 7.3 BWM apply to the withdrawal of ethyl alcohol and alcohol products from a bonded warehouse for consumption,

except to the extent they are modified by this section. However, domestic distilled spirits and wines entered for warehouse may not be withdrawn for consumption, except as provided in Section 11.5(b) and (e) BWM.

(a). Withdrawal of Bulk Distilled Spirits-Distilled spirits in bulk may be withdrawn for non-industrial use from a bonded warehouse only for:

1. transfer to a distilled spirits plant (27 CFR 1.82);
2. transfer to a Class 8 warehouse (27 CFR 1.82) or another Class warehouse;
3. transfer to persons holding permits as producers or blenders of wines for addition to such wines (27 CFR 1.83);
4. an agency of the United States, or of any State or political subdivisions thereof, for warehousing or bottling (27 CFR 1.84); or
5. re-importation in bulk (27 CFR 27.120).

(b). Withdrawal for Transfer to TTB Bond - Imported bulk distilled spirits may be transferred from a bonded warehouse, without payment of IRC taxes, to the bonded premises of a distilled spirits plant through the filing by the importer or transferee of a copy of the transfer record (27 CFR 27.138) with the withdrawal for consumption and the estimated duties on the spirits (19 CFR 141.102(b)). The importer or transferee shall, upon release of the spirits from CBP custody, be relieved of liability for such tax and the proprietor of the distilled spirits plant shall incur such liability (27 CFR 27.171).

1. Release from Warehouse - Prior to release from the warehouse, the proprietor shall enter on the transfer record the port of entry, TTB carrier identification, warehouse entry number, applicable rate of duty, and serial number of any seals affixed to bulk conveyances. A copy of the transfer record shall be retained in the proprietor's records (27 CFR 27.173). When all CBP requirements have been met, the merchandise will be authorized by CBP for delivery to the distilled spirits plant.

2. Shipment to Distilled Spirits Plant - When a shipment of bulk distilled spirits is made to the distilled spirits plant in a tank car or tank truck, the opening shall be sealed by the proprietor with CBP seals in such a manner as will prevent unauthorized removal of spirits without detection (27 CFR 27.174). The spirits shall be transported pursuant to TTB bond, not pursuant to CBP bonded procedures.

(c). Bulk Wines - Natural wine imported or brought into the United States in bulk containers (more than 60 liters) may be withdrawn from CBP custody and transferred in such bulk containers to the premises of a bonded wine cellar without payment of the IRC tax imposed on such wine. The proprietor of the bonded wine cellar to which such wine is transferred shall become liable for the tax upon release of the wine from CBP custody, and the importer, or the person bringing such wine into the United States, shall thereupon be relieved of the liability for

such tax (26 U.S.C. 5364).

(d). Bulk Beer - Beer imported or brought into the United States in bulk containers may be withdrawn from CBP custody and transferred in such bulk containers (more than 31 gallons) to the premises of a brewery without payment of IRC tax imposed on such beer. The proprietor of the brewery to which such beer is transferred shall become liable for the tax on the beer upon release of the beer from CBP custody and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for the tax (26 USC 5418).

(e). Authority Limited to Bulk Distilled Spirits, Wine or Beer - There is no authority for the withdrawal of bottled distilled spirits, bottled wine, or bottled beer, from a bonded warehouse to TTB bonded premises without payment of tax.

(f). Withdrawal of Ethyl Alcohol for Non-beverage Use – If a claim is made by an importer other than the United States or a governmental agency thereof for the classification upon withdrawal for consumption of ethyl alcohol of an alcohol strength of 80 percent volume or higher pursuant to HTS Subheading 2207.10.60, the importer shall file in connection with the withdrawal a declaration that the alcohol is to be used for non-beverage purposes only and whether the alcohol is to be used for fuel purposes (19 CFR 10.99(a)). CBP will release the alcohol for transfer pursuant to TTB bond to a distilled spirits plant upon deposit of estimated duties and without payment of IRC taxes and upon receipt of a transfer record (27 CFR 27.138) for bulk spirits. A package gauge record (27 CFR 251.139) must also be submitted if the alcohol is in packages. The merchandise will be released for transfer pursuant to the procedures of Sections 7 and 11.4(d) BWM and 27 CFR 27.173 and 27.174.

(g). Preparation of Warehouse Withdrawal – IRC tax will be assessed on all alcohol beverages withdrawn for consumption, except as indicated in this subsection. The tax will be determined as of the time of withdrawal (27 CFR 27.40), and will be collected only on the quantity withdrawn for consumption (19 CFR 159.4 and 9.7 BWM), i.e., the importer is not liable for duties and taxes entered for warehouse but not withdrawn (see Sec. 8.2(d) BWM). In the computation of duties on alcoholic beverages, the method prescribed in the computation of IRC taxes will be followed (19 CFR 159.4(b)).

1. Unit of Quantity for HTS and IRC Code - The appropriate HTS subheading and metric unit of quantity will be shown on CBPF 7501, even if the entry was made before January 1, 1989, the date the HTS went into effect. However, the IRC tax will continue to be collected on wine gallons, proof gallons, or barrels of 31 gallons, as appropriate. The following multiplication factors will be used to convert TSUS quantities to HTS quantities and vice versa:

<u>Conversion</u>	<u>Multiply by:</u>
Wine gallons to liters	3.785412
Proof gallons to proof liters	3.785412 to obtain proof liters at 15.56oC (60oF)

Barrels of 31 gallons to liters	117.347772
Liters to wine gallons	0.264172
Proof liters to proof gallons	0.264172 to obtain proof gallons at 60oF (15.56oC)
Liters to barrels of 31 gallons	0.008522

2. IRC Tax Rates-The IRC taxes imposed on alcoholic beverages are in addition to the duties imposed thereon. The tax rates are as follows:

<u>Alcoholic Beverage</u>	<u>Tax Rate</u>
Distilled spirits	\$13.50 per proof gallon (26 USC 5001)
Beer and malt beverages	\$18 per barrel of 31 gallons (26 USC 5051)
Still wines 14% alcohol	\$1.07 per wine gallon or less (26 USC 5041)
Still wines 14 % to 21% Alcohol	\$1.57 per wine gallon (26 USC 5041)
Still wines 21% to 24% Alcohol	\$3.15 per wine gallon (26 USC 5041)
Champagne and other sparkling wines	\$3.40 per wine gallon (26 USC 5041)
Artificially carbonated wine	\$3.30 per wine gallon (26 USC 5041)
Hard Cider	\$0.226 per wine gallon (26 USC 5041)

A credit for wine content or flavors content will be allowed against the tax on distilled spirits according to the provisions of 26 USC 5010. All products of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such

(27 CFR 27.40). Still wines containing more than 24 percent alcohol are classifiable as distilled spirits and taxed as such (27 CFR 27.42). Further explanation of procedures for collecting taxes on alcoholic beverages are found in 27 Part 7, Subpart D.

3. IRC Tax Exemption - IRC taxes will not be collected on withdrawals of alcoholic beverages for consumption for:

A. Transfer of bulk distilled spirits to the bonded premises of a distilled spirits plant (27 CFR Part 27, Subpart L and Sec. 11.4(b) BWM);

B. Transfer of bulk natural wine to the to the premises of a bonded wine cellar (26 USC 5364);

C. Transfer of bulk beer to the premises of a brewery (26 USC 5418);

D. The use by the United States of distilled spirits; (27 CFR Part 27, Subpart M);

E. Commercial samples for soliciting orders for products of foreign countries as specified in 27 CFR 27.49; (samples for quality control purposes, however, are subject to tax pursuant to 27 CFR 27.75); or

F. Diplomatic use (Chapter 98, Subchapter VI or IX, HTS; 26 USC 5066(b), 5362(e), and 5053(g)).

4. IRC Tax Deferral-The payment of IRC taxes (but not duties) due upon withdrawal for consumption may be deferred in the case of an importer who wishes to pay on a semi-monthly basis and who has received the approval of the port director for the optional method of payment provided for in 19 CFR 24.4. The optional procedure may be used by the importer until the port director terminates the privilege pursuant to 19 CFR 24.4(h).

(h). Packaging, Marking, and Closure Requirements-The packaging, marking, and closure requirements applicable to imported distilled spirits, wine, and malt beverages withdrawn for consumption are found in 27 CFR Parts 4, 5, 7, and 27. These requirements apply to merchandise entered directly for consumption as well as merchandise withdrawn from a warehouse for consumption.

1. Wine

A. Imported wine having an alcohol content of 7% or more shall be released from the bonded warehouse for consumption only if:

i. an approved certificate of label approval has been filed and the actual labels on the merchandise match those on the certificate; (27 CFR 4.40)

ii. a certificate of origin and identity has been filed, if such

certificates are issued by the foreign government concerned; (27 CFR 4.45) and

iii. the containers meet the standard of fill requirements of 27 CFR Part 4, Subpart H, or a certificate of nonstandard fill has been presented to the port director. (27 CFR 4.46)

B. Imported wine containing less than 7% alcohol must have a Government Warning Statement and conform to FDA label rules.

2. Beer - Imported beer and malt beverages shall be released from a bonded warehouse for consumption only if an approved certificate of label approval has been filed and the actual labels on the merchandise match those on the certificate. (27 CFR 7.31)

3. Distilled Spirits - Imported distilled spirits shall be released from a bonded warehouse for consumption only if:

A. An approved certificate of label approval has been filed and the actual labels on the merchandise match those on the certificate (27 CFR 5.51);

B. A certificate of age and origin has been filed as specified in 27 CFR 5.52;

C. The containers meet the standard of fill requirements of 27 CFR Part 5, Subpart E, or a certificate of nonstandard fill has been filed with the port director (27 CFR 5.53);

D. Immediate containers of 1 gallon or less have closures affixed so as to leave a portion of the closures remaining on the containers when they are opened. The closures shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers (27 CFR 27.61 and 27.62).

4. Bottle Requirements - Filled bottles of liquor which do not meet the bottle requirements of 27 CFR Part 27, Subpart N, will not be released for consumption, unless an exception has been authorized by the appropriate TTB officer (27 CFR 27.208).

5. Exemptions - Provisions concerning labeling requirements of 27 CFR Part 5 do not apply to imported distilled spirits (1) not for sale or for commercial use, (2) on which no tax is to be paid upon withdrawal from CBP custody, (3) for use as aircraft or vessel supply; or (4) for personal use (27 CFR 27.74). Samples of distilled spirits, wine, and beer are not exempt from closure, marking, and labeling requirements except samples for quality control purposes (27 CFR 27.75) and samples for soliciting orders for products of foreign countries (27 CFR 27.49).

11.5 Withdrawal of Domestic Distilled Spirits, Wines, and Beer - Domestic distilled spirits, wines and beer in a bonded warehouse have been transferred there only for withdrawal for specific purposes. Therefore, proprietors and importers should pay close attention to the

provisions of Section 11.2(f) BWM before withdrawal documentation is prepared.

(a). Withdrawal for Exportation - Distilled spirits, wines, or beers that have been transferred to a bonded warehouse and entered pursuant to the authority of 26 USC 5214(a)(9), 5362(c)(4), or 5053(a) for storage pending exportation may be withdrawn from warehouse for exportation pursuant to the relevant procedures of Part 7 BWM for direct or indirect exportation; sale by duty-free stores to individuals departing from the United States; vessel or aircraft supply; transfer to another bonded warehouse in the same or a different port; or transfer to a foreign-trade zone in zone-restricted status. Such merchandise may not be withdrawn for sale to diplomats or other individuals or entities pursuant to the provisions of 19 CFR 148, Subpart I.

(b). Withdrawal for Diplomatic Use - Distilled spirits, wines or beers that have been transferred to a bonded warehouse pursuant to the authority of 26 USC 5214(a)(4) or 5062(b) and 5066, or 5362(c)(4) and 5362(e), or 5053(g) for subsequent sale to diplomats may be withdrawn from warehouse only for sale to diplomats or other individuals or entities pursuant to the provisions of 19 CFR Part 148 Subpart I, and Section 7.4 BWM; for domestic consumption as noted in paragraph (b)(1) below; or transfer to another bonded warehouse in the same or a different port.

1. Withdrawal for Domestic Use - If the merchandise is withdrawn for domestic consumption, a CBPF 7501 must bear a notation that the merchandise is being withdrawn for consumption pursuant to the authority of 26 USC 5066(c), 5362(c), or 5053(g) as appropriate. Merchandise withdrawn for consumption shall be treated pursuant to the provisions of Chapter 98, Subchapter I, HTS, and is subject to the bottling, labeling, closure, and marking provisions of 27 CFR Parts 4, 5, and 251 and Section 11.4(h) BWM. No statistical copy of the CBPF 7501 shall be accepted or required for forwarding to the U.S. Census Bureau.

(c). Withdrawal for Alternative Exportation or Diplomatic Use - Distilled spirits, wines or beers entered for storage for either exportation or sale to diplomats as provided in Section 11.2(f)(2)(i) BWM may be withdrawn from warehouse for any of the purposes noted in Section 11.5(a) and (b) BWM, except that they may not be withdrawn for consumption.

(d). Withdrawal for Transfer to Another Warehouse - If domestic distilled spirits, wines, or beers are withdrawn for transfer to a bonded warehouse in a different port, the withdrawal on a CBPF 7512 shall bear one of the following statements, as appropriate to the purpose for which they were originally transferred to a bonded warehouse:

“Merchandise destined only for exportation per 26 USC 5214(a)(9), or 5362(c)(4), or 5053(g); may not be diverted for domestic consumption or sale to diplomats.”

“Merchandise destined for exportation or sale to diplomats per 26 USC 5214(a)(9) and 5066, or 5362(c)(4) and (e), or 5053(g); may not be diverted for domestic consumption.”

“Merchandise destined only for sale to diplomats or for domestic consumption per 26 USC 5066, or 5362(c)(4) and (e), or 5053(g); may not be diverted for any other use or disposition.”

The re-warehouse entry filed at the destination port shall bear the same notations of the appropriate statute under which transfer took place from TTB premises as appeared in the original warehouse entry.

(e). Withdrawal for Return to TTB Bonded Premises-Domestic distilled spirits which have been transferred to a bonded warehouse pursuant to 26 USC §§5066 or 5214(a)(9) (see Sec. 11.2(f) BWM) may be returned to the bonded premises of a distilled spirits plant for redistillation (27 CFR 252.115(a)). The distilled spirits may be removed from the bonded warehouse without payment of tax upon acceptance by the port director of a CBPF 7501 bearing the notation: "Withdrawn for return to TTB bonded premises pursuant to 26 USC §5223(b)". The form shall be accompanied by the notice made by the proprietor of the distilled spirits plant specified in 27 CFR 27.116.

The port director shall sign the notice as a permit for removal of the spirits from the bonded warehouse. The warehouse proprietor shall cancel and date its copies of TTB Form 5100.11 and return them to the principal on the TTB bond responsible for the return of the spirits (27 CFR 27.117). A copy of the notice shall be placed in the proprietor's records (19 CFR 19.12(a)(2)). There is no authority for the return to bonded premises of distilled spirits for any reason other than redistillation, or for return of wine to TTB bonded premises for any reason, once they have been deposited in a bonded warehouse.

(f). Exemption from Tax - Domestic distilled spirits, whether destined for exportation or diplomatic use, are exempt from the payment of IRC tax, otherwise due 14 days after the last day of the submitting period following removal from a bonded warehouse, pursuant to 26 USC §5061(d) (See Sec. 7.5(c) BWM).

11.6 Withdrawal for Other Purposes - Withdrawal of imported alcohol products for purposes other than consumption shall be made pursuant to the relevant procedures of 19 CFR Part 144, Section 7 BWM, and this section.

(a). Withdrawal for Exportation - Any requests from foreign countries for certificates of origin, except in the case of Class 6 warehouses, shall be referred to the appropriate TTB officer (27 CFR 28.104).

(b). Withdrawal for Shipment to Puerto Rico - Imported alcoholic beverages shall be withdrawn for shipment to insular possessions pursuant to the procedures described in Section 7.7 BWM. However, withdrawal for shipment to Puerto Rico shall be made pursuant to the procedures in Section 7.1, 19 CFR Part 18, and Part 7 BWM. Such shipments constitute exportation pursuant to 27 CFR Part 28 (See definition of exportation pursuant to 27 CFR 28.11). If distilled spirits, wines, or beers are withdrawn for consumption in Puerto Rico, they

are not subject to any IRC tax upon withdrawal; however, if they are subsequently shipped back to the U.S. mainland, they are subject to the requirements of 27 CFR Part 26.

(c). Gauging Upon Removal - Any gauging performed by the proprietor upon removal of bulk-distilled spirits from the warehouse shall be performed according to the procedures of 27 CFR Part 30 (Gauging Manual), except as provided in Section 11.7(b) BWM.

11.7 Loss of Bulk Distilled Spirits in Warehouse - Because of the high IRC tax on distilled spirits, there is a special significance in terms of revenue loss for thefts and unaccountable losses of distilled spirits from bonded warehouses. The procedures of this section shall be followed in addition to the procedures in Part 8 BWM.

(a). General - Alcoholic beverages are treated differently from any other imported commodity in that duty and taxes are assessed only on the quantity entered or withdrawn for consumption (19 CFR 159.4(a)). Since an importer of distilled spirits entered for warehouse is liable only for duties and taxes on the amount withdrawn there from, he is not liable for any duties and taxes on shortages that occur while the spirits are in warehouse. A warehouse proprietor, on the other hand, is responsible for shortages of distilled spirits (as he may be for shortages of any merchandise) which occur while the spirits are in his warehouse (See Sec. 8.2(d) BWM).

1. Duty and Tax Allowance - Upon the presentation of appropriate supporting evidence, an allowance for duties resulting from shortages of distilled spirits in bonded warehouses may be granted as specified in 19 CFR 19.6(a)(2), Part 8 BWM, and Section 6.3 BWM. There is no authority in law for any allowance for duties for losses through evaporation, spillage, leakage, absorption, theft, or unaccountable losses (Sec. 8.7(g) BWM).

2. Minor Differences in Gauging - The use of different gauging techniques upon entry and withdrawal results in many minute differences between the entered and withdrawn quantities, as measured for CBP purposes. Determining whether these small differences are allowable shortages is not cost effective beyond a certain point. To reduce the cost of reviewing these small differences, CBP considers it desirable to administratively establish a maximum limit on these determinations below which a shortage will be allowed without further review, without the assessment of liquidated damages.

(b). Gauging Techniques - Bulk distilled spirits entered into a bonded warehouse will be gauged upon entry and upon withdrawal. Port directors will establish procedures at each location where bulk spirits are warehoused to assure (1) that the most accurate methods of gauging, consistent with local conditions and 27 CFR Part 30, are used, and (2) that the security measures necessary to preserve the accountability of the imported quantity are followed.

1. CBP in determining the quantity of imported distilled spirits recognizes three methods of gauging. They are listed here in order of preference according to the degree of accuracy provided:

A. Weight

B. Metering
C. Volume

2. The most accurate method available at the bonded warehouse will be used upon withdrawal. If it is possible to use the same method upon entry, this is recommended. However, the use of a different recognized method upon withdrawal from that upon entry is permitted when necessary.

(c). Action on Shortages - If it is determined that a shortage occurred while the spirits were stored in a bonded warehouse; the proprietor will be assessed liquidated damages for the loss unless:

1. an allowance in duties is granted the importer for casualty loss or other reason as set forth in Part 8 BWM;
2. the claim for liquidated damages is waived pursuant to Section 15.11 BWM; or
3. the shortage is 1 (one) percent or less of the total quantity of bulk distilled spirits entered for warehouse, as determined pursuant to the procedures in Section 11.7(d) BWM.

(d). Administrative Allowance of 1 Percent - A shortage of 1 percent or less of the total amount of bulk distilled spirits entered for warehouse may be allowed administratively by the port director without supporting evidence during the complete period of the warehouse entry bond covering the merchandise. No liquidated damages will be assessed on such an allowance, which is not a loss allowance, but rather an allowance for distortion caused by the difference in gauging techniques (Sec. 11.7(a)(2) BWM).

1. Relation to Other Loss Allowances - This allowance may be granted in addition to any loss allowance made pursuant to Part 8 BWM. However, the one percent figure will be calculated upon the total amount entered, without subtraction for any other allowance that may also have been granted.

2. Length of Time in Warehouse - This allowance rate will be used regardless of the length of time spirits have been warehoused. That is, irrespective of whether the spirits were in warehouse 1 day or 5 years, an allowance of only 1 percent or less of the amount entered for warehouse will be granted by CBP.

3. Allowance not Automatic - The granting of the 1 percent administrative allowance is not automatic. If a comparison of entry and Compliance Review or withdrawal gauges shows a 0.6 percent loss, only a 0.6 percent allowance will be granted. If the gauges show, say, a 2.6 percent loss, the proprietor will be assessed liquidated damages for the entire loss, and not just the amount in excess of 1 percent, unless the proprietor provides appropriate supporting evidence for a loss allowance. If there is evidence of fraud, collusion, connivance, or negligence by any person in connection with the bulk spirits, an allowance of less than 1 percent, or no allowance at all, will be

granted, based on the best evidence available to the port director.

4. Cumulative Effect - Shortages pursuant to this allowance are cumulative. If a 0.5 percent documented shortage is found upon the first check, an additional 0.3 percent shortage is found upon second check, and an additional 0.5 percent shortage is found upon withdrawal; the first two shortages will be allowed, but the entire 1.3 percent loss must be supported by appropriate evidence when the additional shortage is disclosed at final withdrawal before a further allowance is granted. The 1 percent figure is always based on the amount entered into warehouse, not on the amount entered minus previously discovered shortages.

5. Recordkeeping - Whenever any shortages are discovered, whether or not an allowance is granted, the inventory and accounting records of the proprietor (19 CFR 19.12(a)(1)) shall be adjusted to show the quantity of bulk distilled spirits actually in the bonded warehouse, as recorded through gauging, and a copy of the gauging report placed in the permit file folder (19 CFR 19.12(a)(2)).

6. Effect on Other Alcoholic Beverages - The 1 percent allowance authorized pursuant to this subsection will not be granted on losses of bottled distilled spirits. The port director may authorize it for other alcoholic beverages provided for in Chapter 22, HTS, which have been entered into bonded warehouses in bulk.

7. Administrative Allowance in Class 6 Bonded Warehouse - These instructions do not apply to losses of bulk distilled spirits in Class 6 bonded warehouses. Losses in Class 6 bonded warehouses will be determined through the accounting and monthly return prescribed in 19 USC §1311 and 19 CFR 19.14(e). Therefore, no one percent administrative allowances for shortages of bulk distilled spirits in Class 6 bonded warehouses will be granted by CBP.

(e). Attribution of Loss-When a shortage is discovered, whether by the proprietor or by CBP during a Compliance Review or audit, in a bonded storage tank containing distilled spirits covered by more than one warehouse entry, the shortage will be attributed on a pro rata basis to each entry represented in the tank. The pro rata amount will be considered in determining whether the loss falls within the one percent allowance in Section 11.7(d) BWM. A shortage discovered on the last withdrawal from a tank will be prorated among all warehouse entries represented since the tank was last emptied, if the tank was emptied within 180 days prior to the last withdrawal. Otherwise, a shortage on the last withdrawal will be attributed to the warehouse entry against which the last withdrawal was made.

PART 12 – DUTY FREE STORES

12.1 General – A duty free store is a class 9 bonded warehouse established for purchase by individuals of conditionally duty-free merchandise for the purpose of exportation for use outside of the Customs territory. The merchandise must accompany the individual as they depart via aircraft, vessel or directly to a contiguous country by foot, vehicle or train. “Conditionally duty-free merchandise” refers to merchandise sold by a duty free store on which the duty and taxes have not been paid. The procedures for all bonded warehouses apply to duty free stores except as specified in this chapter or by regulation (19 CFR 19.35-19.39 CR).

12.2 Location – Per 19 CFR 19.35(b) Class 9 bonded warehouses may only be located:

(a) within the same port of entry from which purchasers of duty free merchandise departs the Customs territory;

(b) within 25 miles of the exit point through which the purchaser departs the Customs territory;

(c) in the case of an airport store, within any staffed point of entry, or within 25 miles of any staffed port of entry.

12.3 Integrated Locations – At the request of the proprietor, a class 9 bonded warehouse in multiple noncontiguous sales and crib locations containing conditionally duty free merchandise may be treated as one location if requested by the proprietor (19 CFR 19.35(c)).

(a) The proprietor must be able to provide CBP, upon demand, with an accurate inventory balance of all locations included as the Class 9 bonded warehouse;

(b) The record keeping system must be centralized to the point where the sale is made so as to automatically reduce the quantity by location and the centralized inventory will reflect this. This update must occur no less frequently than the end of each business day.

12.4 Exit Point – The exit point referred to in 12.2 BWM refers to an area in close proximity to an actual exit for departing from the Customs territory.

(a). Land Border – The exit point is the point at which the departing purchaser has no practical alternative to continuing on to a foreign country or returning to the customs territory through a CBP inspection facility.

(b). Seaport - Same requirement as land border.

(c). Airport - A gate holding area or other area where there is a reasonable assurance that conditionally duty free merchandise will be exported.

The port director has the final decision as to what constitutes an exit point or reasonable assurance of exportation

12.5 Notice to Customers - Class 9 bonded warehouses will prominently display signs that clearly state that conditionally duty free merchandise was purchased in the store (19 CFR 19.35(e):

(a) Has not been subjected to U.S. duty or federal tax.

(b) If returned to the U.S. it must be declared and is subject to duty and federal tax with personal exemption.

(c) Is subject to the laws and regulations, including duty and tax, of the destination foreign country.

12.6 Security - The guidelines covered in 19 CFR 19.4(b)(6) and Treasury Directive (TD) 72-56 govern security requirements of duty free store salesrooms and cribs. The responsibility for safeguarding the bonded merchandise while accommodating public access rests with the proprietor. TD 72-56 should be used as a guideline by CBPOs in determining minimum security specifications. The Port director has the discretion to require additional security measures as needed.

12.7 Local Government Approval – If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the port director that the concession or approval required for the enterprise has been obtained.

1. Sales tickets - A sales ticket is considered the equivalent of the supplementary withdrawal provision of 19 CFR 19.6(d). A sales ticket is an invoice of the proprietor's design and shall include the following information;

- A. Serial number and date of preparation of each ticket
- B. Warehouse entry number and specific identifier if applicable
- C. Quantity of goods sold
- D. Brief description of the articles including size of bottles.

B. Full name and address of purchaser. The port director may waive the address requirement for all purchases except alcoholic beverages in excess of 4 liters and cigarettes in excess of 3 cartons. Addresses are also not required for airport duty free stores.

C. A statement on the original (purchasers) copy of the ticket that goods purchased in a duty free store will be subject to duty and/or tax with personal exemption if returned to the U.S.

The sales ticket will be prepared with the information listed above in triplicate at the time of purchase. The original will be given to the purchaser, the proprietor will retain one copy, and one copy will go to the permit file after being attached to the parcel for delivery. The proprietor may retain additional copies. The proprietor will retain a copy of all sales tickets for 5 years from the date of the last sales ticket of the entry.

1. Sales Ticket Register - In addition to the records required in 19 CFR 19.12(a), a sales ticket register must be maintained for each warehouse entry. As the warehouse entry is closed out, the sales ticket register total will be verified against the amount withdrawn. This will be used to certify that all merchandise withdrawn has been exported. The completed sales ticket register will be placed in the permit file folder as provided in 19 CFR 19.6(d)(5)(iii). The sales ticket register will contain the following information:

- A. Warehouse entry number
- B. Specific Identifier (if applicable)
- C. Sales ticket date and number
- D. Description
- E. Quantity
- F. Current Balance

(b). Establishment of Procedures - The proprietor must develop, maintain and follow written procedures that provide reasonable assurance to the port director that all conditionally duty free merchandise purchased in the duty free store will be exported from the Customs territory. Any changes to these procedures must be submitted to the port director who will approve them prior to implementation. The port director is responsible to ensure that these procedures are being followed and are effective. The port director may at any time require any change in the procedures that is deemed necessary for assurance of exportation.

1. Special Procedures for Airport Duty Free Stores - Airport duty free stores shall establish maintain and enforce written procedures to ensure that all sales of conditionally duty free merchandise are limited to personal use quantities. Personal use quantities are defined as amounts only suitable for uses other than resale and are reasonable quantities for personal, family or gift use. Proprietors shall not knowingly sell or deliver merchandise for the purpose of resale. Maintenance of these procedures is the same as for other written procedures.

(c). Eligibility of Merchandise - Only conditionally duty free merchandise may be stored in a Class 9 warehouse storage area. Domestic and duty paid merchandise may be kept in the

bonded sales area of a Class 9 warehouse for display, sale and delivery to purchasers. This merchandise shall be clearly marked "DUTY PAID" or "U.S. ORIGIN" to distinguish it from duty free merchandise.

(d). Eligibility of Purchasers - Only ticketed passengers or crewmembers engaged for the flight (on the manifest) are eligible to purchase duty free merchandise at airport and seaport locations. The eligible purchaser must provide documentation that the goods will be exported with them.

(e). Inventory Procedure - Proprietors are required to maintain a separate current inventory for each storage area, crib and sales area where conditionally duty free goods are kept pursuant to warehouse entry numbers or unique identifier. CBP must have ready access to these records and they must be kept to show transactions at each facility separately. These inventories must be reconciled with the accounting records and the permit file folders. Proprietors are subject to all record-keeping requirements of warehouses in addition to requirements for Class 9 warehouses.

12.8 Duty Free Store Operations- There are numerous differences in procedures between duty free stores and other warehouse operations. These are established in 19 CFR 19.36.

(a). Withdrawals - Withdrawal pursuant to a blanket permit and using the sales ticket procedure requires that the merchandise being withdrawn is conditionally duty free and will be delivered to individuals for exportation from the Customs territory. Other withdrawals may be made using individual withdrawals or a blanket permit may be issued for vessel or aircraft supplies and the personal or official.

(b). Establishment of Procedures - The proprietor must develop, maintain and follow written procedures that provide reasonable assurance to the port director that all conditionally duty free merchandise purchased in the duty free store will be exported from the Customs territory. Any changes to these procedures must be submitted to the port director who will approve them prior to implementation. The port director is responsible to ensure that these procedures are being followed and are effective. The port director may at any time require any change in the procedures that is deemed necessary for assurance of exportation.

1. Special Procedures for Airport Duty Free Stores - Airport duty free stores shall establish maintain and enforce written procedures to ensure that all sales of conditionally duty free merchandise are limited to personal use quantities. Personal use quantities are defined as amounts only suitable for uses other than resale and are reasonable quantities for personal, family or gift use. Proprietors shall not knowingly sell or deliver merchandise for the purpose of resale. Maintenance of these procedures is the same as for other written procedures.

(c). Eligibility of Merchandise - Only conditionally duty free merchandise may be stored in a Class 9 warehouse storage area. Domestic and duty paid merchandise may be kept in the bonded sales area of a Class 9 warehouse for display, sale and delivery to purchasers. This merchandise shall be clearly marked "DUTY PAID" or "U.S. ORIGIN" to distinguish it from duty free merchandise.

(d). Eligibility of Purchasers - Only ticketed passengers or crewmembers engaged for the flight (on the manifest) are eligible to purchase duty free merchandise at airport and seaport locations. The eligible purchaser must provide documentation that the goods will be exported with them.

(e). Inventory Procedure - Proprietors are required to maintain a separate current inventory for each storage area, crib and sales area where conditionally duty free goods are kept pursuant to warehouse entry numbers or unique identifier. CBP must have ready access to these records and they must be kept to show transactions at each facility separately. These inventories must be reconciled with the accounting records and the permit file folders. Proprietors are subject to all record-keeping requirements of warehouses in addition to requirements for Class 9 warehouses.

12.9 Crib Operations - A crib is a bonded area, separate from the bonded storage area, where a supply of duty free articles is kept for purposes of delivery for exportation. It usually will be located beyond the exit point. A crib may be a permanent facility or room or it may be a mobile facility moved periodically to locations beyond the exit point. The quantity of goods maintained in a crib are determined by what is commercially necessary for a period of time and approved by the port director. This amount may be increased or decreased by the port director depending on compliance or necessity. The port director may also order unsold goods be returned to the bonded storage area.

(a). Transfer of Merchandise to/from a Crib - Merchandise transferred to and from a crib will follow the procedures governing bonded merchandise moving within a port (19 CFR 125 Subpart D and 144.34 (a)) or pursuant to a local control system approved by the port director (19 CFR 19.37(b)). If delivery is made by a licensed cartman, the cartage vehicle shall be conspicuously marked (19 CFR 112.27).

(b). Delivery Vehicles - Vehicles (including mobile cribs) containing bonded duty free merchandise for transfer to or from a crib, will carry a list of all merchandise on board. The proprietor, upon request, will provide a transfer document sufficient to account for the inventory being moved. The merchandise on board these vehicles shall be subject to CBP inspection.

(c). Retention of Records - Proprietors shall maintain records of all merchandise transferred beyond the exit point and returned. These records need not be placed in the permit file but will be retained for 5 years after exportation of the articles. They must be filed by date of movement, destination site and warehouse entry number or unique identifier.

12.10 Supervision of Exportation - CBP will provide general supervision of merchandise exported from Class 9 bonded warehouses pursuant to the sales ticket procedure. This

supervision may take the form of compliance reviews, examination of merchandise and/or audits of the proprietor's records. This general supervision also extends to goods exported from TTB export bonded warehouses in conjunction with exportation from duty free stores.

12.11 Delivery for Exportation - The method of delivery to the purchaser for exportation from the Customs territory varies with the type of operation.

(a). Land Border Locations - Land border locations are exit points where individuals depart to a contiguous country by vehicle, vessel or on foot via bridge, tunnel, highway, walkway or ferry. This does not include departure to a contiguous country by air or sea. Land border duty free stores must deliver merchandise for exportation beyond the exit point except as noted below.

1. Delivery may be made at or before the exit point if approved by CBP. The delivery shall be done pursuant to the physical supervision of a CBPO or if procedures have been approved by the port director ensuring that duty free merchandise shall be exported from the Customs territory (19 CFR 19.36(b)). The CBPO shall sign the sales ticket to certify exportation and return it for retention by the proprietor. The port director may also require that the purchaser sign the sales ticket to certify receipt.

(b). Seaport Locations - Seaport locations have an exit point where individuals depart directly from the Customs territory to a foreign country via a vessel over 5 tons. Seaport duty free stores must deliver merchandise for exportation beyond the exit point except as noted in 12.11(a)(1) BWM.

(c). Airport Locations - Airport locations are an exit point where individuals depart the Customs territory to a foreign country via a scheduled, chartered or "for-hire" airline. Airport duty free stores deliver in one five ways.

1. Delivery in a sterile area- an area that is within the airport and has access restricted to those passengers departing from the Customs territory. Delivery is made directly to the purchaser for carrying aboard the aircraft. No mixing of arriving domestic and departing passengers is allowed in a sterile area.

2. Passenger delivery- the proprietor or a bonded cartman may deliver directly to the passenger at or beyond the exit point. This requires that the exit point be clearly delimited by boundary markings or supervised using the approved procedures of 19 CFR 19.36(b). There must be reasonable assurance that the merchandise will be exported.

3. Aircraft delivery- the merchandise will be delivered by a bonded cartman directly to the aircraft to be laden as baggage or in a sealed container for distribution upon departure to a foreign country.

4. Unit-load delivery - Duty free merchandise may be sold to passengers from a port that is not the last port in the U.S. if the following conditions are met:

A. Only a passenger holding a through ticket on the flight, without stopover privileges may make a purchase.

B. Merchandise shall be placed as baggage on the aircraft

C. Merchandise will be placed on the aircraft in containers sealed with CBP seals. The seal numbers will be recorded on the aircraft's general declaration.

D. The proprietor will prepare a list, in duplicate, of all duty free merchandise on the flight. An airline representative will sign this list as a receipt and retain a copy. The other copy will be returned to the proprietor as a record copy.

E. The merchandise will not be delivered until the aircraft has been secured for final departure from the Customs territory. The importer of record of the merchandise will be liable if the seals are broken prior to export or the merchandise is not exported.

5. Cancelled or aborted flights or no show passengers- On cancelled or aborted flights the proprietor will provide the name of the person receiving the merchandise, the airline ticket number, the description and quantity of the merchandise and the date and time of delivery in lieu of retrieving the merchandise for safekeeping until the passenger actually departs. If the proprietor delivers merchandise to an airline for a passenger that does not board the flight, the proprietor will be responsible to establish procedures to obtain redelivery of the merchandise from the airline.

(d). Recordkeeping Requirements - The proprietor will keep copies of lading lists and certificates of exportation in files for 5 years from date of exportation of the warehouse entry number.

(e). Delivery Methods - Delivery to purchasers for purpose of exportation may be made by licensed cartmen or bonded carriers (19 CFR 144.34 or Part 125, Subpart D). The port director may approve a local control system where discrepancies found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f). Return of Merchandise - Merchandise withdrawn pursuant to the sales ticket procedure that is undeliverable or rejected may be returned to the duty free store. The records for the transaction will be amended to reflect the return.

PART 13 - BONDED MANUFACTURING WAREHOUSES, CLASS 6

13.1 General - Buildings or parts of buildings may be designated as bonded warehouses for the manufacture of merchandise in bond. (19 USC §1555(a)) Articles manufactured in whole or in part of imported materials, or of materials subject to IRS tax, and intended for exportation without duty, shall, in order to be so manufactured and exported, be made and manufactured in bonded warehouses known and designated as Class 6 bonded warehouses. Note that this provision does not prohibit the deposit in the warehouse of domestic merchandise that is not subject to IRS tax. Articles manufactured pursuant to these provisions may be withdrawn for transportation and delivery to any bonded warehouse for the sole purpose of export. (Sec. 311 TA) All merchandise manufactured in a bonded warehouse shall be withdrawn for exportation, except by-products and waste materials and cigars made in whole of tobacco imported from any one country, which articles may be withdrawn for home consumption. Since there are no Class 6 warehouses now manufacturing cigars for home consumption, no procedures for such warehouses are included in the BWM, and the regulatory provisions have been deleted from 19 CFR. Imported or domestic distilled spirits may not be withdrawn from a Class 6 bonded warehouse for transfer to TTB bonded premises for reconditioning. Other regulatory provisions for Class 6 warehouses are found in 19 CFR 19.13 through 19.15.

13.2 Establishment of Class 6 Bonded Warehouse - The general provisions pertaining to storage warehouses apply to Class 6 bonded warehouses (19 CFR 19.13(a)), except as noted otherwise in this section of the BWM.

(a). Application to Establish - An application to establish a Class 6 bonded warehouse shall be made pursuant to the procedure set forth in 19 CFR 19.2, but shall describe the manufacture proposed to be carried out, and the kinds of materials intended to be stored and used therein. The application shall be accompanied by a list of all articles intended to be manufactured in the warehouse, setting forth (1) the specific name under which the articles are to be exported and known in the trade, (2) the names of all ingredients used in the manufacture, and (3) the quantities of dutiable or taxable ingredients or materials used in the manufacture of the articles (19 CFR 19.13(d)).

(b). Secure Storage - Each Class 6 bonded warehouse shall have a secure area, separated from the rest of the premises, to be used exclusively for the storage of imported articles or articles subject to IRS tax awaiting manufacture. It shall also have a separate secured area exclusively for the storage of products manufactured in the bonded warehouse. These areas shall be secured from both the manufacturing area and non-bonded areas to prevent any unauthorized person from having access thereto. The goods placed therein shall be arranged so as to assist CBPOs in making examinations, taking samples, and conducting compliance reviews (19 CFR 19.13(g)).

(c). Voluntary Suspension of Bonded Status - The use of all or part of a Class 6 bonded warehouse may be suspended and subsequently reinstated by the warehouse proprietor pursuant to the procedure in 19 CFR 19.3(b). Before the port director approves the suspension, all bonded merchandise shall be removed from the bonded area. Before reinstatement all nonbonded

merchandise shall be removed from the area to be reinstated.

13.3 Entry and Deposit of Materials - Materials to be used in manufacture shall be deposited in a Class 6 bonded warehouse pursuant to the provisions of this section.

(a). Entry of Imported Merchandise - Imported merchandise to be manufactured in a Class 6 bonded warehouse shall be entered on CBPF 3461 or CBPF 7501, Type 21, as described in Section 4.3 BWM. Before delivery to the bonded warehouse is authorized, the port director will require a bond on CBPF 301, containing the bond conditions in 19 CFR 113.62. If the merchandise is transferred from a bonded warehouse of another class, a rewarehouse entry on CBPF 7501, Type 22, shall be filed with CBP (19 CFR 19.14(a)). Importers of distilled spirits into a Class 6 bonded warehouse require a TTB basic permit as a condition of acceptance by CBP of the bonded warehouse or rewarehouse entry (27 CFR 1.20, but see 19 CFR 12.37 and 11.2(c) BWM).

(b). Deposit of Domestic Distilled Spirits and Wines - Non-tax paid domestic spirits and wines may be transferred from a distilled spirits plant or a bonded wine cellar to a Class 6 warehouse (19 USC §1311, 27 CFR 252.25 and 19 CFR 19.14(d)). There is no authority for tax paid spirits and wines, or beer whether or not tax paid, to be transferred from a TTB bonded or controlled premises to a Class 6 bonded warehouse. Before such merchandise may be transferred, the proprietor must furnish bond on TTBF 2736 or 2737, as applicable (27 CFR 252.63 or 252.64). Such transfers are made pursuant to TTB bond, not in CBP bond pursuant to 19 CFR Part 18. Upon arrival at the bonded warehouse, the spirits and wines shall be entered on CBPF 7501 as a warehouse entry, Code 21, and a bond on CBPF 301 shall be required (19 CFR 19.14(d)). The merchandise shall be examined by CBP to the extent deemed necessary to protect the revenue and enforce U.S. laws and regulations. The proprietor shall make a report of gauge on CBPF 6001 and report any discrepancy on TTBF 5100.11. An executed copy of CBPF 6001 and TTBF 5100.11 shall be retained in the proprietor's inventory and accounting records, and other copies disseminated as required by 27 CFR 252.285. Any discrepancies shall also be reported as required by Section 8.3 BWM.

(c). Deposit of Other Domestic Articles - Domestic merchandise, other than distilled spirits and wines subject to IRS tax, to be used in the manufacture of articles in the warehouse (including packages, coverings, and labels) may be deposited in a Class 6 bonded warehouse upon application and permit by the port director in the form prescribed in 19 CFR 19.14(c). The permit for such merchandise shall be given a unique number by the applicant for control purposes. Domestic merchandise that is not to be used in manufacture in the bonded warehouse may not be permitted into the bonded warehouse. Domestic tools, cleaning materials, and other articles used to operate and maintain the bonded warehouse are not "merchandise", and are allowed in the warehouse without any kind of a permit from CBP.

(d). Receipt into Warehouse - Merchandise to be delivered into a Class 6 bonded warehouse shall be received, generally, pursuant to the procedures in Section 4.15 BWM, except that domestic merchandise need not be delivered by a cartman or bonded carrier. The unique number on the permit for domestic merchandise other than distilled spirits and wines subject to IRS tax shall serve as the equivalent of the entry number, shall be recorded in the proprietor's inventory

and accounting records and the permit file folder, and shall be marked on the packages of merchandise received into the bonded warehouse.

(e). Capital Equipment - Imported implements, machinery, or apparatus for use in the construction or repair of a Class 6 bonded warehouse or for the conduct of business within the bonded warehouse may not be entered into a Class 6 bonded warehouse. Such merchandise shall be entered or withdrawn for consumption before delivery to the bonded warehouse (19 CFR 19.13(h)).

13.4 Operations in Class 6 Bonded Warehouse - The procedures of Parts 5 and 6 BWM shall apply to proprietors of Class 6 bonded warehouses, except as modified or supplemented in this section.

(a). Product Marking - Manufactured articles shall be marked with the trade name of the goods. They may be marked also with the formula and with an insignia or name as designated by the purchaser, so long as these additional markings do not conflict with the actual formula or otherwise present a false or misleading statement or impression about the manufactured article (19 CFR 19.13(f)). Also, each package of merchandise that has been manufactured shall be marked with the warehouse entry number (19 CFR 19.13(g)).

(b). Limitation on Use of Warehouse - Class 6 bonded warehouses shall be used solely and exclusively for the purpose for which they are bonded (19 CFR 19.13(a)). This means that the bonded warehouse may not be used for the storage or manipulation of bonded or other merchandise except in connection with the manufacturing process for which the bonded warehouse was created.

(c). Conformance with Formula - Proprietors shall conform strictly to the formula filed with the bond or thereafter. No article shall be permitted to be manufactured or withdrawn which does not contain all ingredients in the quantities specified in the formula, or contains any ingredient not specified in the formula (19 CFR 19.13(e)). The formula presented with the bond may be changed upon notification in writing to the port director. The port director may require additional an bond in the case of a new formula and ingredients when necessary to protect the revenue or properly administer U.S. laws and regulations.

(d). Manufacture of Distilled Spirits - Any kind of merchandise may be manufactured in a bonded warehouse, except that the manufacture of distilled spirits from grains, starch, molasses, or sugar or any dilution or mixture of them shall not be permitted therein (19 USC §1311). Distilled spirits and wines which are rectified or reduced in alcohol content and bottled in a Class 6 bonded warehouse shall be deemed to be manufactured within the meaning of 19 USC §1311. Blending or rectifying of either domestic or imported wines or distilled spirits in a Class 6 bonded warehouse shall not be permitted by the port director without a TTB basic permit. (19 CFR 12.37) The basic permit shall have been obtained pursuant to the procedures in 27 CFR Part 1.

(e). Recordkeeping Requirements - In addition to the recordkeeping requirements of 19 CFR 19.12(a), the proprietor of a Class 6 warehouse shall:

1. Record all transfers from the storage area to the manufacturing area to the finished product storage area; (19 CFR 19.13a(a))

2. Record all manufacturing operations in sufficient detail to allow a CBPO to determine whether there has been compliance with the manufacturing formula (19 CFR 19.13a(c));

3. Take an annual physical inventory of the merchandise in conjunction with the annual submission required by 19 CFR 19.12(g) (19 CFR 19.13a (b)); and

4. At the end of each month, file with the port director a detailed statement of all imported merchandise and domestic merchandise subject to IRS tax that was used in the manufacture of articles in the warehouse (19 CFR 19.14(e)).

13.5 Withdrawal from Class 6 Bonded Warehouse - Other than cigars manufactured in bond, no articles received into a Class 6 bonded warehouse or manufactured therein, shall be withdrawn or removed from the bonded warehouse except for direct or indirect exportation to a foreign country (19 CFR 19.15(a)). Packing material, waste, and by products may, however, be withdrawn for consumption.

(a). Right to Withdraw - No merchandise manufactured in a Class 6 bonded warehouse may be withdrawn by a person other than the manufacturer, either from the Class 6 bonded warehouse or from a bonded warehouse where the merchandise is stored awaiting exportation, unless an authorization by the manufacturer is endorsed on the withdrawal or the manufacturer has previously transferred the right to withdraw in writing (19 CFR 19.15(h)).

(b). Packing Materials and Articles - Imported containers, coverings, or labels, whether introduced into the bonded warehouse with the imported material or imported for use in putting up articles manufactured in the bonded warehouse for exportation, but not so used, may be withdrawn for consumption pursuant to CBPF 7501 upon the payment of applicable duties in their condition as withdrawn (19 CFR 19.15(b) and (c)).

(c). By Products and Waste Materials - By products, including waste having commercial value, may be withdrawn for consumption upon the payment of duty which would be assessed if the by products or waste were imported from a foreign country. (19 USC §1311) Withdrawal shall be made on CBPF 7501, which shall describe in detail the product or waste and the material from which it was produced. The by-product or waste shall be appraised pursuant to the provisions of 19 USC §1401a as if it were imported directly from the foreign country that was the source of the imported material from which the by-product or waste was derived (19 CFR 19.15(d)).

(d). Summary Statement for Packing Material, By Products, and Waste - Each withdrawal for consumption from a Class 6 warehouse pursuant to Section 13.5(b) or (c) BWM above shall contain a summary statement showing for each class of material the quantity on hand in the account, the quantity covered by the withdrawal, and quantity remaining in the warehouse account of those materials (19 CFR 19.15(e)). Each withdrawal for any other purpose from a

Class 6 bonded warehouse shall bear the statement specified in 19 CFR 144.32(a).

(e). Shipment of Distilled Spirits and Wines to Puerto Rico - Distilled spirits and wines manufactured in a Class 6 bonded warehouse may be withdrawn for shipment to Puerto Rico and there withdrawn for consumption. Upon withdrawal for consumption in Puerto Rico, duties (but not IRS taxes) shall be collected on all imported merchandise and containers used in the manufacture of the wines or spirits in the Class 6 warehouse. (19 USC §1311) The withdrawal from the Class 6 bonded warehouse shall be made on CBPF 7512 pursuant to 19 CFR 144.36 and shall contain a statement of the kind and quantity of all imported merchandise (in its condition as imported) and containers used in the manufacture and packing of the spirits and wines. This information is in addition to the information required on the withdrawal pursuant to 19 CFR 144.36(d). If no imported merchandise or containers have been used, the withdrawal shall be endorsed to that effect. (19 CFR 19.15(i) and 7.1) Upon arrival in Puerto Rico, the merchandise may be withdrawn on a combined warehouse entry and withdrawal on CBPF 7501 (19 CFR 144.42 and 4.12(c) BWM) or may be entered for rewarehouse and subsequently withdrawn for consumption on CBPF 7501.

(f). Withdrawal for Transportation and Re-warehousing for Export - Articles may be withdrawn for transportation and delivery to a bonded warehouse in a different port of entry for immediate export there from. (19 USC §1311) This means that the merchandise may not be further transferred to another port, but rather must be exported from the same port to which it was delivered. Such withdrawals shall be made pursuant to 19 CFR 144.36, except that the withdrawal shall be endorsed to show that the merchandise has been withdrawn from a Class 6 warehouse for re-warehouse entry and immediate export from the destination port. A re-warehouse entry shall be filed pursuant to 19 CFR 144.34(b) and 144.41 and 4.11 BWM. Domestic distilled spirits and wines from a Class 6 bonded warehouse shall be transferred and a re-warehouse entry filed in the same manner as imported distilled spirits and wines (19 CFR 19.15(g)(2)). The merchandise entered with the re-warehouse entry shall thereafter be withdrawn for exportation pursuant to 19 CFR 144.37.

(g). Withdrawal for Exportation - Articles manufactured in a Class 6 warehouse may be withdrawn for direct or indirect exportation pursuant to the procedures in 19 CFR 144.37, except that CBPF 7512 shall be endorsed with a statement that the shipment is for exportation only and may not be diverted into U.S. commerce. All exportations from a Class 6 bonded warehouse pursuant to this section, or exportations from a warehouse at a different port pursuant to Section 13.5(f) BWM shall be done pursuant to CBP supervision. The same proofs of exportation shall be required as required in the case of other warehouse withdrawals for exportation (19 CFR 19.15(k)), except as noted in 19 CFR 19.15(j) and 13.5(h) BWM.

(h). Proof of Manufacture and Exportation - The manufacturer of merchandise in a Class 6 bonded warehouse shall file with the proprietor thereof in the case of each exportation or period of manufacture of exported articles (not to exceed a 6-month period) a statement showing the date and number of the warehouse entry, the quantity and identity of the dutiable or taxable merchandise used, the quantity and description of the articles into which it was manufactured, and the quantities of any by product or waste (whether or not the waste had commercial value). In the case of distilled spirits, the statement shall be verified by the foreman or chemist of the

factory and shall show the number of packages of spirits used, the marks and numbers of those packages, the number of taxable gallons, and the degree of proof (19 CFR 19.15(j)). The proprietor shall review the statement and, if it accurately reflects the transaction, shall certify its authenticity and place a copy in the permit file folder (19.12(a)(2)) of each warehouse entry represented in the statement. When the fact of exportation has been established by such proofs and the by-products and waste have been exported, withdrawn for consumption, or destroyed, the charge against the entry bond shall be cancelled.

(i). Certificate of Origin - The entry of distilled spirits into certain foreign countries is permitted only upon the filing of an official certification showing the origin and age of the spirits. The port director may countersign such a certificate on TTBF 2177 if all the information on the form and its accompanying documents is accurate and complete.

13.6 Reimportation of Class 6 Bonded Warehouse Products - Articles which have been manufactured or produced in a Class 6 bonded warehouse and exported are not eligible, upon their re-importation into the United States, for duty-free treatment pursuant to any of the subheadings of Chapter 98, Subchapter I, HTS (U. S. Note 1(c) to Chapter 98, Subchapter I, HTSUS).

PART 14 - BONDED SMELTING AND REFINING WAREHOUSES, CLASS 7

14.1 General - Any plant engaged in smelting or refining, or both, of metal-bearing materials may, upon the giving of satisfactory bond, be designated as a bonded smelting and refining warehouse. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond. The bond charges may be cancelled upon exportation, payment of duties, transfer to another Class 7 bonded warehouse, transfer to another class of warehouse, or transfer of bond charges to another Class 7 bonded warehouse without physical shipment. Due allowance shall be made in the cancellation of bond charges for wastage of metals. Two or more smelting and refining warehouses may be included in one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation. (19 USC §1312) The definition of "metal-bearing materials," "smelting and refining," and "product of smelting and refining" are found in Sec. 19 USC §1312(f). Both imported and domestic metal-bearing materials may be smelted and refined together in Class 7 warehouses. The regulations covering Class 7 warehouses are found in 19 CFR 19.17 through 19.25. Certain legal requirements of Class 7 warehouses are also found in the Notes and Additional U. S. Notes of Chapter 26, HTSUS.

14.2 Establishment of Class 7 Warehouse – The general provisions pertaining to establishment of bonded warehouses apply to Class 7 bonded warehouses, except as provided in this section.

(a). Application to Establish - The application shall be made by the manufacturer to the port director of the port in which the plant is located, and shall show the location of the premises and the work to be carried on therein (19 CFR 19.17(a)). CBP cargo security standards and specifications will be applied, as appropriate to a smelting and refining plant, through a cargo security survey prior to the port director's decision as to whether the application is approved.

14.3 Entry and Receipt into Class 7 Bonded Warehouse - No imported merchandise other than metal-bearing materials, with their packing, if applicable, may be entered into a Class 7 bonded warehouse, or deposited therein without payment of duty. Domestic metal-bearing materials may be deposited in Class 7 warehouse without any kind of CBP permit. Bonded metal-bearing materials shall be kept separate and distinct from non-bonded materials until they have been sampled and weighed according to commercial methods (19 USC §1312 and 19 CFR 19.17(f)). The bond charge for the metal-bearing material shall be documented in the entry permit copy placed in the permit file folder and recorded in the proprietor's inventory and accounting records.

(a). Blanket Smelting and Refining Bond - Two or more smelting and refining warehouses may be included in one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation (19 USC §1312(a)). Under this bond in any given warehouse, all of the metal-bearing materials could be actually of domestic origin, which may or may not be charged to the bond.

14.4 Wastage Allowance - An allowance shall be made for wastage lost in processing in the

warehouse in accordance with Additional U. S. Note 1, Chapter 26, HTSUS, and 19 CFR 19.18. This allowance is limited to ores or other materials that are subject to duty at specific rates of duty on their copper, lead, or zinc content. The amount of the allowance is limited to 18 kilograms per dry metric ton. This absolute deduction is in lieu of the pre-HTSUS allowance, which allowed either an absolute deduction pursuant to Headnote 4(b) to Schedule 6, Part 1, HTSUS, or actual losses pursuant to Headnote 4(c). The wastage allowance of Additional U. S. Note 1, Chapter 26, HTSUS, shall be applied in canceling the bond charges specified in Section 19 USC §1312(b)

14.5 Cancellation of Bond Charges - The bond charges initially made upon entry pursuant to 19 USC §1312(a) and 14.3 BWM may be cancelled in whole or in part in five ways:

(a) Upon exportation from the Class 7 bonded warehouse which treated the material, or any other Class 7 bonded warehouse (under the same bond), of a quantity of the same kind of metal contained in any product of smelting or refining of materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage;

(b) Upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing material (no wastage deduction authorized);

(c) Upon the transfer of the bond charges to another Class 7 bonded warehouse by physical shipment of the same kind of metal contained in any product of smelting or refining of material equal to the dutiable quantity contained in the imported metal-bearing material less wastage;

(d) Upon transfer of the bonded charge to a warehouse other than a Class 7 bonded warehouse by physical shipment of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing material less wastage, and upon withdrawal from such warehouse for exportation or consumption; and

(e) Upon transfer to another Class 7 bonded warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials, less wastage of the plant of initial treatment of such materials, provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges. (19 USC §1312(b))

(f). Substitution of Domestic and Imported Materials - Thus, pursuant to the foregoing provisions, the material actually shipped need not consist of imported metal-bearing materials or products of smelting or refining produced there from. Domestic metal-bearing materials or products may be substituted for imported in cancellation of bond charges, if all the conditions of the provisions are met. In the case of Item 5 in the above list, the material need not even be physically shipped.

(g). Determining Amount of Bond Charge Cancellation - The full dutiable contents of metal-bearing materials, as ascertained by commercial assay by Government chemists, less the wastage allowance (including metals entirely lost in smelting or refining), shall constitute the quantity of dutiable metal that must be either exported, duty-paid, or transferred to another

warehouse to cancel the charge made against the smelting and refining bond. (19 CFR 19.18(a))

14.6 Recordkeeping and Reporting Requirements - Proprietors of a Class 7 bonded warehouse shall maintain the records and make the reports provided for in this section in addition to the recordkeeping requirements of 19 CFR 19.12(a), unless otherwise specified herein.

(a). Record of Receipts and Dispositions - Each plant for which a wastage deduction provided for in Additional U. S. Note 1 to Chapter 26, HTS, is to be claimed shall maintain complete smelting and refining records showing the receipts and disposition of each shipment of materials, imported and domestic, received at the plant. These records shall be maintained for not less than 5 years (19 CFR 19.19(a)). Such records will be maintained as part of the inventory and accounting records specified in 19 CFR 19.12(a)(1).

(b). Record of Wastage Claim - If losses are claimed pursuant to Additional U. S. Note 1 to Chapter 26, a record shall be kept which will become part of the Annual Statement described in Section 14.6(e) BWM.

(c). Reports of Sampling, Weighing, and Assaying - Class 7 bonded warehouse proprietors shall maintain reports of sampling, weighing, and assaying as follows:

1. A report on each shipment of metal-bearing materials into the warehouse shall be maintained for 5 years from the date of liquidation (19 CFR 19.17(f)). A copy of each report shall also be placed in the permit file folder for the appropriate entry.

2. The proprietor shall maintain a report of materials transferred from a smelting warehouse to a refining warehouse, when these operations are carried out in separate establishments, for 5 years after the liquidation of the entry (19 CFR 19.21(b)).

(d). Monthly Statement of Inventory and Bond Charges - When one or more plants are covered pursuant to one blanket smelting and refining bond, an overall statement shall be filed by the manufacturer with each field director, RAD, of each region in which the plants are located by the 28th of each month. The statement shall show the inventory as of the close of the preceding month of all metals, imported and domestic, at each plant covered by the bond and the total of bonded charges for all plants (19 CFR 19.17(g)).

(e). Annual Statement - Every manufacturer engaged in smelting or refining, or both, shall file with the field director, RAD, of the region in which each plant is located, an annual statement for the fiscal year of the plant not later than 60 days after the end of the fiscal year. No specific form is required for the statement, but it shall contain the information specified in 19 CFR 19.19(b). This statement is in lieu of the annual proprietors' submission specified in 19 CFR 19.12(g). A copy of the statement should also be furnished to each port director involved in the liquidation of entries filed by same importer.

(f). Reporting of Smelting or Refining Change - The proprietor of a Class 7 bonded warehouse shall immediately notify the port director having jurisdiction over the plant of any

material changes in the character of metal-bearing materials smelted or refined, whether imported or domestic, and of any changes in the methods of smelting or refining (19 CFR 19.19(a)).

14.7 Prohibited Activities - No imported merchandise or articles other than metal-bearing materials shall be received or deposited in a Class 7 bonded warehouse, unless it has been previously entered or withdrawn for consumption. No imported merchandise (including refined products of imported metal-bearing materials) may be manufactured, other than smelting or refining, in a Class 7 bonded warehouse, unless it has been previously entered or withdrawn for consumption. Imported metal-bearing materials or products of smelting or refining may be manipulated in a Class 7 bonded warehouse only to the extent incident to the smelting or refining process or to shipment from the bonded warehouse. Imported metal-bearing materials or products of smelting or refining of imported materials may be stored in a Class 7 bonded warehouse and remain there until the end of the 5-year bonded period. Where a company owns bonded and un-bonded smelting and refining facilities, it is not authorized to transfer, under the principle of fungibility, any portion of imported metal-bearing materials to a non-bonded facility without payment of duties.

14.8 Withdrawal for Consumption - When smelted or refined products are withdrawn for consumption, duty shall be collected thereon without any allowance for wastage, except where the metal was transferred to a bonded warehouse other than a Class 7 and withdrawn there from for consumption (19 USC §1312(b)(2) and (4) and 19 CFR 19.18(b)).

(a). Withdrawal for Later Physical Removal in Smelted or Refined Form - A withdrawal for consumption may be filed for metal which will later be physically removed in the form of smelted or refined product, even if at the time of filing the withdrawal the dutiable metal covered by the bond charge being cancelled by the withdrawal is still in the form of ores, concentrates, crude metals, or intermediate products (19 CFR 19.18(b)).

(b) Quantity of Withdrawal - The warehouse withdrawal shall be filed on CBPF 7501, which shall show the estimated amount of dutiable metal in the products and the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products must be actually on hand at the plant or plants covered by the smelting and refining bond at the time of filing the withdrawal. However, neither the actual ability to remove smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal need be required at the time of withdrawal. (19 CFR 19.18(b))

14.9 Withdrawal for Exportation - In general, procedures for direct and indirect exportation from Class 7 warehouses are those specified in 19 CFR 144.37 (19 CFR 19.20(a)). However, the additional procedures in this section shall be followed in canceling bond charges pursuant to 19 USC §1312(b)(2) and (4)

(a). Withdrawal for Exportation Credited to Another Plant - Cancellation of bond charges pursuant to 19 USC §1312(b)(1) may be credited to the account of a plant other than the one from which the merchandise is actually exported.

1. Documentation and Procedure - In such cases, the proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of CBPF 7512, in addition to those required by 19 CFR 144.37(a), for forwarding to each port where credit is to be applied. The withdrawal shall state the plant or plants to receive the credit, the warehouse entry or entries to which the credit is to be applied, and the quantity of dutiable metal to be applied to each specified entry. When any of the credits represent the last withdrawal against a specified entry, the words "Final Withdrawal" shall be shown in the withdrawal in respect to such entry or entries. These informational requirements are in addition to those specified in 19 CFR 144.36(d) for indirect exportations. Actual exportation of the shipment shall be documented on one of the copies of a CBPF 7512.

2. Memorandum Withdrawals - If at the time of withdrawal, the proprietor does not know the plants or warehouse entries to be credited or the metallic content of the dutiable metal being exported, preparation of CBPF 7512 may be delayed for up to 30 days after the actual date of movement of the dutiable metal from the plant. In such cases, a memorandum withdrawal shall be filed as provided in 19 CFR 144.37 for the purpose of obtaining the CBP record of exportation. All copies of such withdrawals shall be conspicuously marked "MEMORANDUM WITHDRAWAL" (19 CFR 19.23).

(b). Crediting of Withdrawal for Exportation – The warehouse entry account of the plant designated to receive credit for the exportation shall be credited with:

1. the quantity of dutiable metal exported;
 2. the wastage in effect on the date of entry at the plant of initial treatment of materials;
- and
3. The proportion of any other dutiable metals in the entry being credited which were lost at said plant in the production of a quantity equal to that exported (19 CFR 19.25(a)).

(c). Withdrawal of Products of Crude Metal for Exportation - Upon withdrawal for exportation of metal from a Class 7 bonded warehouse, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the appropriate warehouse account shall be credited as provided in 19 CFR 19.22.

(d). Exportation From Another Bonded Warehouse - When metal-bearing materials or products of smelting or refining of imported metal-bearing materials are transferred to another bonded warehouse and are exported there from, the exportation shall be credited as provided in 19 CFR 19.21(e) (exportation from another Class 7 bonded warehouse) or 19 CFR 19.25(c) (exportation from any other class of bonded warehouse).

14.10 Transfer to Another Bonded Warehouse - In general, procedures for transferring metal-bearing materials or products of smelting or refining to another warehouse, at the same or a different port, are the same as those specified in Sections 144.34 CR and 7.5 and 7.6 BWM (19 CFR 19.20(b)(1)). The additional procedures in this section shall be followed to cancel the bond charges specified in 19 USC §§1312(b)(3), (4) or (5).

(a). Transportation to Another Port - When such products are to be transferred to a warehouse of any class at another port, CBPF 7512 shall show, in addition to the information specified in 19 CFR 144.36(d), the quantity of metal withdrawn, the applicable wastage, the imported material from which the metal was produced, and the quantity of dutiable metal charged on entry (19 CFR 19.20(b)(2)).

(b). Smelting and Refining in Separate Establishments - If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported metal-bearing materials may be removed from the smelting warehouse for shipment to a refining warehouse at another port, a re-warehouse entry filed, and credited upon withdrawal as specified in 19 CFR 19.21. A record of sampling, weighing, and assaying of such transfers shall be maintained as specified in 19 CFR 19.21(b).

(c). Theoretical Transfer - Transfer may be made of dutiable metal, without physical shipment, from one Class 7 bonded warehouse to another at a different port by a warehouse withdrawal and re-warehouse entry executed as provided in 19 CFR 144.36 and 144.41, provided that there is enough like metal in any form at the plant to which the theoretical transfer is made (19 CFR 19.24(a)).

(d). Wastage Allowance - the wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on CBPF 7512, and set up as part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant to which theoretical transfer was made (19 CFR 19.24(b)). The wastage to be applied shall be that set up at the plant receiving the credit for the theoretical transfer, irrespective of the date of withdrawal from the plant making the theoretical transfer (19 CFR 19.25(b)).

(e). Credit for Transfer - On the transfer of dutiable metal to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal in the manner specified in 19 CFR 19.25(a) for withdrawals for exportation. (See Sec. 14.9(b) BWM) This is the amount with which the storage warehouse will be charged upon entry for re-warehouse. In the case of transfers to a Class 6 bonded warehouse, credit will be limited to the quantity of dutiable metal transferred, with no allowance for wastage or production loss in a Class 7 bonded warehouse (19 CFR 19.25(c)).

PART 15 - BONDS AND LIQUIDATED DAMAGES

15.1 General - In any case in which a bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize CBPOs to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or CBP may be authorized to enforce (19 USC §1623(a)). A surety bond is a contract whereby one party, the surety or guarantor, guarantees the performance of a second party, the principal, for the benefit of a third party, the obligee (the Government in the case of CBP bonds). Should the principal fail to perform his agreement with the obligee, the surety will be required to pay liquidated damages and will have the right to obtain reimbursement from the defaulting principal. The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States in lieu of surety on any bond required or authorized by law, regulation, or instruction of the Secretary or CBP (19 USC §1623(e)). The general regulations concerning Customs bonds are found in 19 CFR Part 113. The principal kinds of bonds covered in this part of the BWM are the importation and entry bond, as it relates to warehouse entries, and the custodial bond of warehouse proprietors.

15.2 Liquidated Damages - Liquidated damages are amounts of money that the principal has agreed to pay the obligee to compensate for damages, often difficult to determine, to the obligee arising from a default by the principal in his performance pursuant to the bond. The purpose of a liquidated damage provision in a bond is to avoid the necessity for litigation to determine actual damages, difficult to determine, for each and every bond default.

15.3 Bond Administration - CBP is not authorized to collect liquidated damages in an amount in excess of the face amount of the bond. General methods for estimating the face amount are shown in Section 3.5(d)(1) BWM for warehouse custodial bonds and Section 4.7(a) BWM for bonded warehouse importation and entry bonds. However, determination of the face amount is at the discretion of the port director, considering the guidelines specified in 19 CFR 113.13(b). Port directors are directed to periodically review each bond filed in their port to determine whether they are adequate to protect the revenue and insure compliance with the law and regulations (19 CFR 113.13(c)). Port directors are directed to require additional security when they believe acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy (19 CFR 113.13(d)). The grant of authority to CBP for requiring bonds and setting their amount is strongly stated and comprehensive in 19 USC §1623. The right of a party to keep doing business at the same bond premium cost is not paramount to the Government's right to protect the revenue (*Hera Shipping, Inc., Plaintiff v. Harry Carnes*, 10 C.I.T. 493, 496).

15.4 Agreements of Warehouse Importation and Entry Bond – Bonded warehouse proprietors share with importers for direct consumption many of the agreements of the importation and entry bond pursuant to 19 CFR 113.62. The principal agreements directly affecting warehouse importers in particular are covered below:

(a). Agreement to Pay Duties, Taxes, and Charges - If merchandise is imported and withdrawn from a bonded warehouse for consumption in the United States the principal and surety agree:

1. to deposit within the prescribed time, any duties, taxes, or charges imposed or estimated to be due at the time of withdrawal;

2. to pay, as demanded by CBP, all additional duties, taxes, and charges subsequently found to be due on any entry secured by the bond;

3. specifically in the case of merchandise entered into a bonded warehouse, to pay any duties, taxes, and charges found to be due on any merchandise which remains in the bonded warehouse at the end of the 5-year bonded period; and that the obligation to pay duties, taxes, and charges applies whether it is properly withdrawn or is unlawfully removed by the principal or other person, unless payment is made or secured to be paid by another person (19 CFR 113.62(a)(1)(i) & (ii) and 19 CFR 113.62(a)(2)).

(b). Reimbursement and Exoneration of the United States - The principal and surety agree to exonerate the United States from any risk, loss, or expense arising out of the principal's importation, entry, or withdrawal of the merchandise (19 CFR 113.62(g)(2)). In respect to warehouses, this agreement is principally applicable to the reimbursement of any charges due the Government for cartage, storage, and labor in connection with general order shipments or merchandise held in Class 1 warehouses (19 CFR 125.11(c), 18.7(a), and 144.32(c)).

(c). Agreement on Duty-Free Withdrawals - If the principal withdraws any merchandise without payment of duty and tax, or at a reduced rate of duty and tax, as permitted by law, the principal, per 19 CFR 113.62(h), agrees:

1. to use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment, e.g. use as vessel or aircraft supplies;

2. if a fishing vessel, to present the original approved application to CBP within 24 hours of each arrival in the Customs territory from a fishing voyage;

3. to furnish timely proof to CBP that any merchandise withdrawn pursuant to any law permitting duty-free treatment was used in accordance with that law, e.g. withdrawn for exportation; and

4. to keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by CBP

(d). Consequences of Default - Liquidated damages are not assessed for failure to comply with the agreements described in Section 15.4(a) or (b) BWM since the actual damages are known and easy to determine. The principal and surety are obliged only to pay the applicable duty, tax, charge, or other cost itself. Liquidated damages are assessed, however, for a default in the agreement described in Section 15.4(c) BWM.

15.5 Agreements of Warehouse Custodial Bond - The custodial bond conditions pursuant to 19 CFR 113.63 are applicable also to bonded carriers, cartmen, and container freight station

operators. The agreements most directly affecting warehouse proprietors are these listed below:

(a) Receipt of Merchandise - The principal agrees to:

1. operate as a custodian of any bonded merchandise received and to comply with all regulations regarding the receipt, safekeeping, and disposition of such merchandise;
2. accept only merchandise authorized pursuant to Customs Regulations; and
3. maintain all records required by regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized CBPO (19 CFR 113.63(a)).

(b). Safekeeping of Merchandise - The principal agrees to:

1. keep safe any merchandise placed in its custody including, when approved by CBP, repacking and transferring such merchandise when necessary for its safety or preservation; and
2. comply with Customs Regulations relating to the handling of bonded merchandise (19 CFR 113.63(b)).

(c). Disposition of Merchandise - The principal agrees, per 19 CFR 113.63(c) to:

1. dispose of merchandise in a manner authorized by CBP Regulations; and
2. file timely with CBP any report required by Customs Regulations.

(d) Compliance with Licensing and Operating Requirements - The principal agrees to comply with all Customs laws and regulations relating to the principal's facilities and employees (19 CFR 113.63(e)).

(e). Reimbursement and Exoneration of the United States – Per (19 CFR 113.63(h)) The principal and surety agree to:

1. pay the compensation and expenses of any CBPO as required by law or regulation;
2. pay the costs of any locks, seals, and other fastenings required by Customs Regulations for securing merchandise placed in the principal's custody;
3. pay for any expenses connected with the suspension or termination of the bonded status of the premises;
4. exonerate the U.S. and its officers from any risk, loss, or expense arising out of the principal's custodial operation; and
5. pay any charges found to be due CBP arising out of the principal's custodial operation

(f). Consequences of Default - Liquidated damages are not assessed for failure to comply with the agreement described in Section 15.5(e) BWM, since the actual damages are known and easy to determine. The principal and surety are obliged only to pay the applicable expense, charge, or cost. However, liquidated damages are assessed for a default in the other agreements pursuant to the custodial bond.

15.6 Merchandise vs. Non-Merchandise Default - The method of determining how the amount of liquidated damages is calculated pursuant to either a custodial bond or an importation and entry bond depends on whether the default is a merchandise or a non-merchandise default.

(a). Calculation of Merchandise Default Amount - If the principal defaults in an agreement and the default involves merchandise, the principal and surety agree to pay liquidated damages equal to the value of the merchandise or three times the value of the merchandise if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(b). Calculation of Non-merchandise Default Amount - If the principal defaults in an agreement and the default does not involve merchandise, the principal and surety agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation.

(c). CBP Determination of Nature of Default - Principal and surety agree that whether or not a default involves merchandise is determined by CBP. Furthermore, the amount to be collected for defaults involving merchandise is based on the quantity and value of the merchandise as determined by CBP (19 CFR 113.62(m) and 113.63(i)).

15.7 What Constitutes a Merchandise Default - CBP defines the term "merchandise involved in the default", as it appears in the custodial bond applicable to bonded warehouses as meaning any merchandise which:

- (a) Cannot be located or accounted for in a bonded warehouse;
- (b) Has been removed from a bonded warehouse without a proper CBP permit; or
- (c) Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:
 - 1. without proper CBP permit;
 - 2. not in accordance with the description of the activity in the permit; or
 - 3. in the case of Class 6 bonded warehouses, not manufactured in accordance with the formula specified in 19 CFR 19.13(e).

A merchandise default, for the purposes of the importation and entry bond in 19 CFR 113.62(h)

(see Sec. 15.4(c) BWM) means any merchandise:

(a) Which was duly delivered by a cartman from a bonded warehouse to a place of lading for exportation or use as aircraft or vessel supplies, but cannot be located or accounted for as having been so laden;

(b) Which was duly laden on a vessel or aircraft but was re-landed in the United States without a CBP permit; or

(c) For which the principal, as demanded by CBP, furnished no proof (as opposed to late or untimely proof) of exportation or use as vessel or aircraft supplies.

15.8 What Constitutes a Non-merchandise Default - A non-merchandise default is any default which does not meet the definition of a merchandise default. Generally, it is a failure in recordkeeping or handling requirements where there is no evidence that merchandise was (1) diverted into the commerce without a permit or (2) used in a manner not in accordance with the terms of a permit. Defaults not involving merchandise are to be treated as distinct from one another and shall not be grouped into one default. A default involving one CBP entry may not be combined with a default involving another CBP entry, except where FIFO inventory accounting has been duly authorized. Where there is a default in timeliness of an action, each business day of default constitutes a separate default. When one irregularity leads to one or more other irregularities, only the original irregularity shall be treated as a default.

(a) Examples:

1. If merchandise covered by two entries (or two FIFO inventory categories) is stored in the same unsanitary manner, there are two defaults; (19 CFR 19.4(b)(7));
2. If three elements of information on CBPF 300 are omitted, there are three defaults; (19 CFR 19.12(g));
3. If a permit is not filed in a permit file folder until 8 business days after the event occurs, there are two defaults; (19 CFR 19.12(d)(4));
4. If a proprietor fails to report three broken seals on the same conveyance, there are three defaults; (19 CFR 19.6(e));
5. If one error in subtracting in the inventory and accounting records leads to multiple errors in the record balance or the annual submission, there is only one default; (19 CFR 19.12(a)(1), (d)(4), and (g)) and;
6. If one clerical error causes CBPF 300 to be submitted 5 business days late, there is only one default (19 CFR 19.12(g)).

15.9 What Constitutes Restricted Merchandise - "Restricted merchandise," for the purpose of determining liquidated damages for defaults involving merchandise, means merchandise which

may not be authorized for delivery from CBP custody without a special permit, or a waiver thereof, by an agency of the U.S. Government. It includes all quota merchandise, whether CBP or another agency administers the quota. Such merchandise is prohibited from consumption in the United States in the absence of the special permit, and actual damages to the Government from its diversion into commerce without permit are greater than the mere nonpayment of duties and taxes on the merchandise. Alcoholic beverages, mixtures, or articles containing spirits subject to taxation pursuant to the IRS Code (Title 26 USC) and/or subject to regulation pursuant to Title 27 CFR are treated the same as restricted merchandise, for the purposes of determining liquidated damages for defaults involving merchandise.

15.10 Issuance of Claim(s) for Liquidated Damages - Not every default found by CBP results in a claim for liquidated damages. CBPOs are instructed not to issue such claims without a consideration as to whether:

- (a) CBP has suffered actual or potential damages;
- (b) Compliance with the laws and regulations may not be achieved without liquidated damages;
- (c) Liquidated damages can and will bring about compliance; and

The proprietor has cooperated with CBP in disclosing defaults and promptly correcting them.

Many minor defaults will be handled by CBP through oral or written warnings (See Sec. 16.2 BWM). If CBP decides to issue a claim, it will be issued on CBPF 5955A, Notice and Demand for Payment of Penalty or Liquidated Damages.

(a). Processing of Liquidated Damages Claims and Petitions for Relief - General procedures for these claims are set forth in 19 CFR Part 172 and CBPF Seized Asset Management and Enforcement Procedures Handbook, (CIS HB 4400-01A). If the principal fails to respond to the liquidated damages notice within 60 days after the date of mailing of the notice, or within such additional time as the FP&F Officer (FPFO) may have granted, a separate demand will be made on the surety. Also, the FPFO may refer the unpaid claim to the U. S. Attorney for action. (19 CFR 172.21(a)).

(b). Petitions for Relief - A petition for relief shall be filed with the FPFO within 60 days after the date of mailing of the liquidated damage notice on CBPF 5955A. (19 CFR 172.3) The petition need not be in any particular form, but shall set forth the facts relied on by the petitioner to justify cancellation of the claim for liquidated damages without any payment or upon payment of a lesser amount than stated in CBPF 5955A. The petition must be signed by an authorized person as specified in 19 CFR 172.2(b). If the petitioner is not satisfied with a decision of the FPFO, a supplemental petition may be filed with the port director (19 CFR 172.41). This supplemental petition shall be filed either 60 days from the date of notice of the original decision, or in the timeframes prescribed in the original decision in accordance with 19 CFR 172.41. The petitioner may request that the supplemental petition be forwarded to the Commissioner for review. Supplemental petitions appealing a decision of the Commissioner

shall be filed with the initiating FPFO for transmittal to the Commissioner for reconsideration.
(19 CFR 172.42(b))

15.11 Waiver or Cancellation of Claim Without Payment - The FPFO or other reviewer may either waive issuance of a claim for liquidated damages, or if such a claim has already been issued, may cancel the claim without payment.

(a). Mandatory Waiver or Cancellation - The FPFO is instructed to waive or cancel any claim for liquidated damages if it is determined that the claimed default did not actually occur (19 CFR 172.11(b)). In addition, FPFOs are instructed to waive or cancel liquidated damages under the custodial bond if;

1. The default occurred before the date the custodial bond went into effect; or
2. The default occurred solely because of an error by CBP.

(b). Discretionary Waiver or Cancellation for Default Involving Merchandise - The FPFO may waive the imposition of a claim for liquidated damages for defaults in a custodial bond involving merchandise, or if a claim has already been made, may cancel the claim without payment, upon showing of proper evidence that:

1. the default was reported by the proprietor or importer or transferee, or the proprietor has demonstrated a continuing history of reporting defaults (both defaults involving merchandise and those not involving merchandise) to CBP;

2. where applicable, the importer of record or transferee has filed a withdrawal for consumption for the missing merchandise, or the merchandise was redelivered to CBP custody;

3. the default does not involve restricted merchandise; and

4. there were no negligent, deliberate, or fraudulent acts or omissions by the proprietor in connection with the default.

(c). Discretionary Waiver for Minor Losses of Merchandise - In the case of any shortage which is not "extraordinary" as provided in 19 CFR 19.12(a)(3) and 8.4 BWM a claim for liquidated damages may be waived or cancelled by the port director upon the showing of the proper evidence that:

1. the shortage has been recorded in the proprietor's inventory and accounting records and permit file folder, as required by pertinent regulations;

2. the shortage does not involve restricted merchandise; and

3. there was no negligent, deliberate, or fraudulent action or omission by the proprietor in connection with the default.

(d). Discretionary Waiver or Cancellation For Default Not Involving Merchandise - The port director may waive the imposition of a claim for liquidated damages for defaults not involving merchandise, or if a claim has already been made, may cancel the claim without payment, upon a showing of proper evidence that:

1. The regulatory provision is subject to interpretation and the default was inconsequential or did not affect achievement of the objective of the regulation.

Examples:

An aisle was narrow or partially or temporarily blocked, but the inspector was not materially delayed or impeded in conducting a compliance review; and

One carton of merchandise on every other pallet was marked with the entry number, but the inspector was not materially delayed, impeded, or confused in conducting a quantity count.

If there is no room for interpretation in the regulation, a claim for liquidated damages will be issued. A regulatory provision requiring action by a particular time or date, or on a particular CBP form, is considered to leave no room for interpretation.

1. The proprietor could not comply solely because of circumstances outside his control.

Example:

The proprietor did not file the lading copy of CBPF 7501 in the permit file folder within 2 business days because the vessel master had not yet returned it to the proprietor (See Sec. 7.9(e)(5) BWM).

2. The proprietor voluntarily disclosed the default, or the proprietor has a demonstrated history of disclosing defaults to CBP; and the proprietor has a demonstrated history of promptly correcting defaults; and the default was the result of a clerical error or other inadvertence.

(e). Discretionary Waiver or Cancellation (Entry Bond) - The port director may waive the imposition of a claim for liquidated damages for defaults against the importation and entry bond of the importer, or, if a claim has already been made, may cancel the claim without payment, upon a showing of proper evidence that the default resulted from a clerical error or other non-negligent, inadvertent mistake and that any duties and taxes due on the merchandise have been paid. Such a claim would ordinarily be made against the entry bond if the merchandise was withdrawn for exportation or aircraft or vessel supply use, but no proof is provided that the merchandise was laden for those purposes and a claim cannot be made against another bond, such as the custodial bond of the bonded carrier or licensed cartman or the international carriers bond of the exporting vessel or aircraft.

(f). Effect of Discretionary Waiver or Cancellation - A decision by a port director not to issue a claim for liquidated damages should not be taken to mean the default did not exist, nor that it does not need correction. The port director will bring the default to the attention of the

proprietor through a warning notice instead of a notice of claim of liquidated damages. If there is an apparent to standing of regulatory requirements, a meeting will be held with the proprietor to explain the requirements. If the default is not promptly corrected or if the same default is repetitive, a claim for liquidated damages will be issued. If the port director issues such a claim because the proprietor has failed to take corrective action, the proprietor faces a substantial burden in justifying relief from the damages on the grounds of clerical error or other inadvertence.

15.12 Cancellation Upon Payment of Smaller Amount (Custodial Bond) - If the FPFO or other reviewer does not believe a discretionary waiver or cancellation is warranted in the case of a default in a custodial bond, the petition will be treated according to the guidelines in this section.

(a). Default Involving Merchandise - Petitions for relief from liquidated damages for defaults involving merchandise will be processed according to the following guidelines:

1. If the default resulted from a clerical error or mistake (a non-negligent, inadvertent error), and the situation does not qualify for a waiver or cancellation, the obligation may be cancelled by the proprietor upon payment of:

A. Ten percent of the value of restricted merchandise involved in the default, with no maximum limit per claim; or

B. Three percent of the value of any other merchandise involved in the default, not to exceed \$1,000 per claim.

However, in any case where merchandise cannot be located or accounted for in the bonded warehouse, and a withdrawal for consumption has not been filed or the merchandise has not been returned to CBP custody, an amount will be paid which is not less than the duties and taxes applicable to the merchandise.

2. If the default was the result of negligence by the proprietor (an act which is more than a clerical error but not committed with knowledge that it would breach the bond), the obligation may be cancelled upon payment of damages equal to or not less than 15 percent of the value nor more than 50 percent of the value, or not less than 50 percent of the value nor more than 150 percent of the value in the case of restricted merchandise. However, in the case of merchandise which cannot be located or accounted for in a warehouse, payment of liquidated damages will not be accepted in any amount which is less than the duties and taxes accruing on the merchandise unless a withdrawal for consumption has been filed or the merchandise has been redelivered to CBP custody. The sum to be collected will be determined by the presence or absence of aggravating or extenuating factors such as the following (not all-inclusive):

A. Aggravating Factors:

(1) principal's failure or refusal to cooperate with CBP;

- (2) large number of violations in relation the to number of entries filed;
- (3) principal's long experience in handling warehouse transactions;
- (4) principal's carelessness or willful disregard toward its responsibilities, including defaults which did not involve merchandise; and
- (5) merchandise not returned to CBP custody or duties and taxes not paid thereon.

B. Extenuating Factors:

- (1) contributory error by CBP or by a party independent of the proprietor;
- (2) small number of violations in relation to total number of entries;
- (3) remedial action taken by principal;
- (4) principal's lack of experience in handling warehouse transactions;
- (5) principal's cooperation with CBP; and
- (6) merchandise returned to CBP custody or duties and taxes paid thereon.

3. If the default resulted from an act that was intentional (an act which was done deliberately with the knowledge it would breach the bond), there will be no relief from liquidated damages.

(b). Default Not Involving Merchandise - Petitions for relief from liquidated damages for defaults that do not involve merchandise will be processed according to the following guidelines:

1. If the default resulted from a clerical error and the situation does not qualify for a waiver or cancellation, the obligation may be cancelled upon payment of \$50 per default.

2. If the default resulted from negligence, the obligation may be cancelled upon the payment of not less than \$100 nor more than \$250 per default. The sum to be collected will be determined by the presence or absence of the not all-inclusive aggravating and extenuating factors specified in Section 15.12(a), Items 2.a and 2.b, BWM.

3. If the default resulted from an act that was intentional, there will be no relief from liquidated damages.

15.13 Cancellation Upon Payment of Smaller Amount (Entry Bond) - If the port director or other reviewer does not believe a waiver or cancellation without payment is warranted pursuant to an Importation and Entry Bond, there are currently no CBP wide guidelines for relief. Relief will be granted according to the discretion of the port director.

15.14 Suspension or Revocation of Bonded Warehouse Status - The port director will take action to suspend or revoke the bonded status of a warehouse pursuant to 19 CFR 19.3(e) and (f) (see Sec. 16.7 BWM), if the proprietor has refused or neglected to pay a claim for liquidated damages upon proper order of CBP. This is in addition to any action that may be taken by a court pursuant to a suit initiated by the U.S. Attorney to enforce collection of liquidated damages.

PART 16 - WAREHOUSE ENFORCEMENT ACTIONS

16.1 General - There are ample means at CBP's disposal to insure compliance with the laws and regulations it is responsible for administering. Enforcement measures range from simple warning notices to criminal sanctions with jail sentences. At the same time, CBP recognizes that bonded warehouses provide an important service to the importing community. CBP supervision and sanctions should therefore be fair and not unduly burdensome to warehouse proprietors and importers in the lawful exercise of their trade, as well as effective in gaining compliance with the laws and regulations. Actions taken by port directors to correct violations of the laws and regulations should be commensurate with the seriousness of the violation. A heavier sanction should not be applied if a lighter one will achieve the purpose of gaining compliance. The enforcement actions in Part 16 are listed in increasing order of severity to address increasingly serious violations.

16.2 Warning Notice - When there is reason to believe minor non-merchandise defaults can and will be promptly corrected upon simple notification to the proprietor, the port director may issue an oral or written warning notice or hold an explanatory meeting with the proprietor. Records are maintained by CBP of such notices and meetings, and CBP will follow up to see that the proprietor has corrected the default. (See Sec. 2.3(c) BWM) If the proprietor continues to be in noncompliance, one of the other actions in this Part will be taken.

16.3 Notice of Liquidated Damages - If a warning notice is not appropriate, CBPF 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment, will usually be issued as described in Part 15 BWM. However, if the port director has reason to believe the proprietor is unable or unwilling to comply with the laws and regulations, other applicable provisions of this Part will be followed, in addition to the assessment of liquidated damages.

16.4 Revocation of Blanket Permit - - The port director is authorized to revoke a blanket approval to manipulate that was issued pursuant to 19 CFR 19.11(d) and to require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. The port director may revoke a blanket permit to withdraw (in favor of individual applications and permits) if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering (19 CFR 19.6((d)(ii)) There is no authority for appeal of such a revocation, since it only changes the manner in which a permit is given and does not take away a vested right; however, the port director may receive a request to reconsider the decision to revoke the blanket permit. A blanket permit may be reissued when the conditions that led to the demand for individual permits have ended.

16.5 Physical Supervision - If the port director has reason to believe there is an unacceptable risk that merchandise will be removed from a bonded warehouse without proper permit, or that special security is demanded in connection with a CBP investigation, the warehouse may be locked with a CBP lock, and physical supervision conducted by CBP of all entries, withdrawals, manipulations, destruction, or other transactions requiring a permit in a warehouse (Secs. 2.2(a) and 8.2(a) BWM). Because of CBP staffing limits, physical supervision is generally regarded as a temporary measure. Such supervision will be terminated upon reestablishment of proper

control by the proprietor, presence of other factors that indicate the need for special security has ended, or suspension or revocation as specified in this Part.

16.6 New Bond Requirement - If a warehouse violation(s) or potential violation(s) is deemed a threat to the revenue or proper law enforcement, the port director may require additional bond, as provided in 19 CFR 113.13(c) or (d) and 15.3 BWM. If a proprietor does not furnish additional bond within the period of time demanded by the port director pursuant to the Customs Regulations, no more goods will be sent to the bonded warehouse and those therein will be removed at the expense of the proprietor. This action is not subject to an administrative appeal by the proprietor. However, the port director may also seek to suspend or revoke the bonded status of the bonded warehouse on the grounds of inadequate bond. Such a suspension or revocation may be appealed as noted in Section 16.7(b) BWM.

16.7 Suspension and Revocation Actions - 19 USC §1555(a) provides that buildings or part of buildings may be designated as bonded warehouses. Designation as a bonded warehouse is a privilege, not a right, of the applicant. The port director may suspend or revoke the bonded status of a warehouse pursuant to the procedure in 19 CFR 19.3(f) on the grounds specified in 19 CFR 19.3(e). CBP authority to revoke bonded warehouse status has been affirmed by the Court of International Trade in several cases. See, for example, Baltimore Security Warehouse Co. v. United States, 9 CIT 641. The purpose of suspension and revocation is to obtain compliance with U.S. laws and regulations and deter future violations. The proprietor may voluntarily suspend or discontinue the bonded status of the warehouse, as specified in 19 CFR 19.3(b) and (c) and 3.6(b) BWM.

(a). Grounds for Suspension or Revocation – Per (19 CFR 19.3(e), the bonded status of a warehouse may be suspended or revoked for cause by the port director if:

1. approval of the warehouse application was obtained through fraud or misstatement of a material fact;
2. the proprietor refuses or neglects to obey any proper order of a CBPO or any CBP order, rule, or regulation for the operation or administration of the warehouse;
3. the proprietor or an officer of the proprietor firm is convicted or has committed acts which would constitute a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime;
4. the proprietor does not provide secured facilities or properly safeguard merchandise in the warehouse;
5. the proprietor fails to furnish a current list of names, addresses, and other information required by 19 CFR 19.3(d);
6. the bond required by 19 CFR 19.2(c) or (d) is insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

7. bonded merchandise has not been stored in the bonded warehouse for a period of 2 years;

8. The proprietor or an employee of the proprietor discloses proprietary information contained in documents in the permit file folder to an unauthorized person.

9. The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations of this part.

The grounds for suspension or revocation are limited to those specified in 19 CFR 19.3(e)(1-9). If there is any other reason for which suspension or revocation is sought by CBP, action for cause may be taken only indirectly. For example, the proprietor could be instructed in writing to discontinue a practice that interferes with proper CBP administration of a law or regulation. If the practice continues, grounds may exist for suspension or revocation because of the proprietor's refusal or neglect to obey a proper order of a CBPO.

(b). Procedure for Suspension or Revocation - The procedures for suspension and revocation for cause are set forth in 19 CFR 19.3(f). They meet the requirements of the Administrative Procedures Act (5 USC subchapter 11), and will be carefully followed by CBP to protect the rights of all parties involved and protect CBP interest in the event of any future court action that might ensue. The procedure is initiated with a written show-cause notice from the port director, identifying the grounds for suspension or revocation and specifying the acts or omissions that provide a basis for the suspension or revocation. If the proprietor does not within the 30-day period show cause why the suspension or revocation should not be carried out, the bonded status will be suspended or revoked. If the proprietor timely responds and shows good cause for withdrawing or delaying the suspension or revocation, the port director will so withdraw or delay it.

Example: The proprietor provides evidence that although no merchandise has been stored in the warehouse for 2 years, continued bonded status is necessary for specified business reasons and a shipment of imported merchandise is en route to the warehouse

If the proprietor requests a hearing, the suspension or revocation will be withheld pending the decision. The Commissioner (or designee) will designate a hearing officer within 30 days of the request for a hearing. Counsel may represent the proprietor and all evidence will be presented at this time with the right to cross-examination for both parties. A stenographic record will be prepared and sent with all documentation and the hearing officer's recommendation to the Assistant Commissioner, Office of Field Operations (OFO) (or designee). The proprietor will have 10 days from the date of receipt of the stenographic hearing record to submit in writing additional views or arguments. If the Assistant Commissioner, OFO, decides to uphold the suspension or revocation, the bonded status will be suspended or revoked and the merchandise ordered removed from the warehouse. This is the final CBP administrative action in the case, but the Assistant Commissioner's action is subject to judicial review by the Court of International Trade.

16.8 Suspension of Permits - The port director may suspend the permit of a proprietor to receive, withdraw, manipulate, or destroy merchandise in a warehouse, or to take any other action for which a CBP permit is required, on the grounds specified in 19 CFR 19.3(e). Such a suspension may cover all or part of the merchandise in the warehouse, or all or part of the transactions for which a CBP permit is required. CBP notice to show cause will indicate specifically which merchandise and permits will be covered by the suspension.

(a). Length of Suspension - Suspensions of permits are generally applicable to grounds that are correctable in less than a month after suspension. The suspension will be for a specified period of time up to a month, but may be extended for additional specified periods until the grounds for suspension no longer exist. If the grounds for suspension are not corrected within 3 months, action will be taken by CBP to suspend or revoke the bonded status of warehouse.

(b). Kinds of Permits Affected - The specific permit(s) to be suspended should be (1) relevant to the grounds for suspension, and (2) of a type whose suspension would bring about proprietor compliance in eliminating the grounds for suspension. For example, if the season were finished for seasonal goods to be entered for warehouse, it would be more appropriate for CBP to suspend permits to withdraw merchandise than suspend permits to receive the merchandise.

(c). Effect of Permit Suspension - When permits are suspended, there is no requirement that the merchandise in the warehouse be withdrawn or transferred to another warehouse. After termination of the suspension, permits will be approved upon application in proper form, with no additional qualification requirement of the proprietor. Because of these factors and because the suspension can be targeted to particular permits, importers, or merchandise, permit suspension is less burdensome to warehouse proprietors than suspensions or revocation of bonded status

16.9 Suspension of Bonded Status - The port director may suspend the bonded status of a warehouse on the grounds specified in 19 CFR 19.3(e). The suspension is subject to review as specified in 19 CFR 19.3(f).

(a). Length of Suspension - Suspensions of bonded status are generally applicable to grounds that are correctable within 3 months after the suspension goes into effect. The suspension will be for a specified period of time of up to 3 months, and stated in the notice to show cause. The suspension may be extended for additional specific periods until grounds for the suspension no longer exist. If the grounds are not corrected within 9 months, action will be taken by CBP to revoke the bonded status of the warehouse.

(b). Effect of Suspension - When the bonded status is suspended, the merchandise must be removed from the warehouse without expense to the Government, as described in Section 16.11 BWM. Upon termination of the suspension, the bonded status of the warehouse will be restored without application by the proprietor. Because of this advantage and because the effective period of loss of the bonded status is limited, warehouse proprietor difficulties with this sanction should be fewer than would be the case of revocation of the bonded status of the warehouse.

16.10 Revocation of Bonded Status - The port director may revoke the bonded status of a

warehouse on the grounds specified in 19 CFR 19.3(e), subject to review pursuant to 19 CFR 19.3(f). This is the most severe measure that can be taken by CBP against a proprietor, short of criminal action, since it puts the proprietor out of business as a bonded warehouse. Action for revocation will be taken by CBP when less severe sanctions have been or would be ineffective in obtaining compliance by the proprietor with the laws and regulations. Generally, revocation action will be taken for defaults and violations that are not correctable in less than 3 months; when corrections to be taken while in a suspended status are not timely taken; or when there is little evidence of good faith or competence by the proprietor to correct the deficiencies that form the basis of the grounds for revocation.

(a). Effect of Revocation - When the bonded status is revoked, the merchandise must be removed from the warehouse without expense to the Government (Section 16.11 BWM). The bonded status may be restored to the proprietor only upon reapplication pursuant to 19 CFR 19.2

(b). Reapplication by Revoked Warehouse - Reapplication, including reapplication made pursuant to another company or corporate name involving principals of the proprietor, whose bonded status was revoked, will not be approved unless the port director is satisfied that the grounds for revocation no longer exist. Generally, reapplication will not be approved by CBP if filed less than a year after revocation, or if any charges due pursuant to the custodial bond have not yet been paid.

16.11 Removal of Merchandise - Bonded status is suspended or revoked when the final administrative action for suspension or revocation is completed. Port directors will notify all importers having merchandise in the warehouse of the action, and advise them that they must withdraw their merchandise or transfer it to another bonded warehouse within 30 days after notification. If the merchandise is not withdrawn or transferred within that time, the port director will order it to be transferred by contract cartman to another bonded warehouse or other secure location as specified by the port director. Transfer at the order of the port director will be at the risk and expense of the proprietor, as specified in 19 CFR 113.63(f). The proprietor remains responsible for the merchandise until it is withdrawn for consumption or the cartman or carrier removing the merchandise signs for the merchandise acknowledging its receipt.

16.12 Responsibility of Proprietor After Revocation - The liability of the proprietor pursuant to its bond is not cancelled by reason of revocation or suspension of bonded status. The proprietor remains liable for payment of liquidated damages assessed pursuant to the bond, reimbursement of costs incurred by the Government in connection with the suspension or revocation, and other responsibilities pursuant to the bond, as applicable.

16.13 Penalties for Fraud, Gross Negligence, or Negligence – Per 19 USC § 1592(a), without regard to whether the United States is or may be deprived of any lawful duties or taxes, no person, by fraud, gross negligence, or negligence may:

(a) Enter, introduce, or attempt to enter or introduce, any merchandise into the commerce of the United States by means of:

1. any document, electronically transmitted data or information, written or oral statement, or

act which is material and false; or

2. any omission which is material; or

(b) Aid or abet any other person to commit such a violation

The maximum penalties for such violations range from the domestic value of the merchandise to 20 percent of the dutiable value or two times the lawful duties, fees and taxes of which the United States is or may be deprived, depending on whether fraud, gross negligence, or negligence is involved (19 USC §1592(c)). These are civil penalties. Violations of Section 1592 are not criminal violations that could result in imprisonment of a violator. Section 1592 penalties connected with a bonded warehouse would usually involve an importer rather than a proprietor unless the proprietor has aided or abetted a Section 1592 violation. CBP procedures for handling these penalties are found in 19 CFR 162. Procedures for petitions for relief from the penalties are found in 19 CFR 171.

(a). Due Process – Individuals and businesses accused of violations of 19 USC §1592 have specific due process rights to ensure fair treatment relative to penalties assessed by CBP:

1. CBP must provide a pre-penalty notice to the person concerned, and time for a response, as prescribed in 19 USC § 1592(b)(1) and 19 CFR 162.77 and 162.78;

2. Any ensuing penalty notice must include changes to the alleged facts resulting from consideration of the violator's response to the pre-penalty notice.

3. Lower penalties are assessed when the person concerned has made a valid prior disclosure of a violation before, or without knowledge of, the commencement of a formal investigation of the violation, as prescribed in 19 USC §1592(c)(4) and 19 CFR 162.74, and 19 CFR 171, Appendix B.

4. Limitations are placed on seizure of merchandise involved in the violation, as prescribed in 19 USC §1592(c)(5) and 19 CFR 162.75; and

(b) Payment of Duties - Notwithstanding the assessment or non-assessment of a monetary penalty, CBP will demand payment of any duties and taxes that are due as a result of a Section 1592(a) violation, even if the entry covering the merchandise has already been liquidated. (19 USC § 1592(d) and 19 CFR 162.79b and 162.80)

16.14 Criminal Violations - Criminal violations are those for which an individual, including an officer or agent of a violating corporation, may be criminally prosecuted. Because of Constitutional safeguards against improper prosecutions and convictions, criminal violations are usually investigated by trained ICE agents, sometimes in conjunction with special investigators of other Federal agencies. The principal criminal violations of relevance to warehouse proprietors and importers are shown below:

<u>Authority</u>	<u>Nature of Violation</u>	<u>Penalty</u>
18 USC §111	Assaulting, resisting, or impeding officers in performance of duty	Fine pursuant to Title 18 USC or not more than 1 year in prison for simple assault, 8 years in prison for physical contact or 20 years for assault with a deadly weapon, or both
18 USC §201	Bribery of public official	Fine of 3 times amount of bribe, not more than 15 years prison, or both; disqualified for office of honor, trust or profit with U. S.
18 USC §371	Conspiracy to commit offense or fraud against the United States	A fine, not more than 5 years prison, or both
18 USC §496	Forgery, counterfeiting, or falsely altering entry or withdrawal document	A fine not more than 3 years prison, or both
18 USC §541	Entry of falsely classified goods	A fine not more than 2 years prison, or both
18 USC §542	Entry of goods by false statement	A fine not more than 2 years prison, or both
18 USC §544	Re-landing of goods without payment of duty	A fine not more than 2 years prison, or both; and forfeiture of goods
18 USC §545	Smuggling, including through use of false documents	A fine not more than 20 years prison, or both; and forfeiture of goods
18 USC §548	Fraudulent removal or repacking in warehouse	A fine , not more than 2 years prison, or both; and forfeiture of goods
18 USC §549	Removal from CBP custody or tampering with CBP seal, without permission	A fine, not more than 10 years prison, or both

18 USC §550	False or fraudulent claim for drawback, allowance, or refund upon exportation	A fine, not more than 2 years prison, or both
18 USC §551	Concealing or destroying invoices or other papers	A fine, not more than 10 years prison, or both
18 USC §659	Theft in interstate commerce	A fine, not more than 10 years prison, or both, unless theft value is less than \$1000
18 USC §1001	Falsifying, concealing, or covering up material fact in matter within jurisdiction of U.S. government by any trick, scheme, or device	A fine, not more than 5 years prison (8 years if it involves terrorism), or both
18 USC §1341	Mail fraud	A fine, not more than 20 years prison (or 30 years if it involves a presidentially declared emergency or disaster, or both
18 USC §1343	Wire, radio, or television fraud	A fine, not more than 20 years prison (or 30 years if it involves a presidentially declared emergency or disaster, or both
19 USC §1304	Alteration of country of origin marking with intent to conceal the correct country of origin	Not more than \$100,000 fine, not more than 1 year prison, or both for the 1 st violation and \$250,000 and 1 year in prison, or both, for a second or subsequent violation

Statutes administered by agencies other than CBP may be applicable for violations involving particular kinds of merchandise, such as arms and munitions, endangered plants and animals,

narcotics, toxic substances, and other prohibited merchandise or controlled substances.

16.15 Search, Arrest, and Seizure - The authority of 19 USC §1508-1510, 1555 and 1556 and 19 CFR 19.4 is sufficient for the conduct by CBPOs of compliance reviews and audits. However, in regard to more serious law enforcement violations, warehouse proprietors and importers may come into contact with CBPOs, Contraband Enforcement Teams, Detector Dog Teams, and other ICE agents conducting searches or investigations. To properly enforce the laws and regulations, ICE agents are given considerable authority to conduct searches, arrest suspected violators, and seize merchandise and articles.

(a). Search Authority - Any officer authorized to board or search vessels may stop, search, and examine, within or outside their respective ports, any vehicle or person (or any trunk or envelope) on which they suspect there is merchandise which is subject to duty or was introduced into the United States in any manner contrary to law. (19 USC §482) "Any officer authorized to board or search vessels" includes CBPOs, by virtue of 19 USC §1581. The effect of the conjunction of these statutes is to extend border search authority to bonded warehouses. Other statutes and various court decisions have reinforced this authority. 19 USC §1499 authorizes the examination of any merchandise in a bonded warehouse in CBP custody, and 19 USC §1555 places all merchandise in a bonded warehouse pursuant to CBP custody. In any case where a search warrant is necessary, CBPOs are authorized to obtain a warrant, as specified in 19 USC §1595(a) .

(b). Arrest Authority - Incident to a border search, CBPOs are authorized to arrest any person who is liable to arrest, by virtue of any law respecting revenue, outside as well as within their respective ports and to use all necessary force to make the arrest (19 USC §1581(f)). A CBPO may also be authorized to make an arrest without warrant for any offense against the United States committed in the presence of the CBPO, or for any felony against the United States committed outside the CBPOs presence, if the CBPO has reasonable grounds to believe the person to be arrested has committed or is committing a felony (19 USC §1589a(3)).

(c). Seizure Authority - Merchandise may be seized by any CBPO who has reasonable cause to believe that any law or regulation enforced by CBP has been violated, by reason of which the merchandise has become subject to seizure or forfeiture. (19 CFR 162.21(a)) The CBPO must provide a CBPF 6051 custody receipt for the seizure to the person from whom the merchandise was seized. CBP procedures for handling seizures are set forth in 19 USC § 1602 to 1616 and 19 CFR 162. Procedures for claimants to petition for return of seized goods are found in 19 CFR 171. The most frequent authorities for seizures that may be encountered by warehouse proprietors and importers, aside from those mentioned in Sections 16.13 and 16.14 BWM, are shown below:

<u>Authority</u>	<u>Nature of Seizure</u>
19 USC §482	Merchandise subject to duty or was unlawfully introduced into the

U.S.

19 USC §1305	Pornographic or treasonous material
19 USC §1526	Merchandise imported without consent of trademark holder or with counterfeit trademarks
19 USC §1527	Importation of wild animals or parts in violation of foreign laws
19 USC §1594	Conveyance with prohibited merchandise, or seized for payment of penalty for violation in which conveyance or owner or operator thereof involved
19 USC §1595a	Merchandise introduced into the U.S. contrary to law, and conveying vehicle
19 CFR §162.45 and 19 CFR §162.45a and	Narcotics and other controlled substances cited cited statutes of Title 21 USC

APPENDIX A

AGREEMENT FOR USE OF FIFO BY ISSUES INVENTORY METHOD

In consideration of authorization by the Bureau of Customs and Border Protection (CBP) to use the “FIFO By Issues Inventory Method for Bonded Jet Fuel” as described in Customs Directive 3260-31 or Section 6.7, Bonded Warehouse Manual for CBP Officers, Bonded Warehouse Proprietors and Importers, the undersigned Class 4 CBP Bonded Warehouse proprietor and the undersigned persons desiring to make CBP warehouse entries or withdrawals from the warehouse of aviation jet fuel jointly and severally agree:

1. That the following described storage tank(s), bonded as a class 4 warehouse, is (are) the subject of this agreement:

2. That they explicitly agree to observe and follow the procedures in Customs Directive 3260-31 or Section 6.7, Bonded Warehouse Manual for CBP Officers, Bonded Warehouse Proprietors and Importers, as it may be amended from time to time, that they will familiarize themselves and their responsible employees with the contents of that Directive or Section, and that a copy of the Directive or Section will be readily available to employees actively engaged in entering or withdrawing jet fuel from the bonded warehouse(s);

3. That treatment of shortages and overages will be as described in Customs Directive 3260-31 or Section 6.7, Bonded Warehouse Manual for CBP Officers, Bonded Warehouse Proprietors and Importers, and that in the event of a claim for liquidated damages against the warehouse proprietor the failure or inability of CBP to determine the ownership of specific quantities of fungible jet fuel will not be raised by any of the parties as a defense;

4. That they will exonerate the United States and its officers from any risk, loss, or expense arising out of the use of the “FIFO By Issues Inventory Method for Bonded Jet Fuel”;

5. That this agreement supersedes any provision(s) to the contrary in the so-called throughput agreement with respect to the responsibilities of the parties to CBP; and

6. That the CBP bonded warehouse proprietor warrants that the surety company providing the custodial bond on CBP Form 301 for the above-described warehouse is aware of and assents to the warehouse proprietor's participation in this procedure.

Warehouse Proprietor

Party to Agreement

Port Director of Customs

Party to Agreement

Party to Agreement

APPENDIX B

(T.D. 72-56)

Department of the Treasury—Office of the Secretary

Standards for security of international cargo. There are published below for information of the public recommended physical and procedural standards for the security of imported merchandise and merchandise for export.

Dated: February 4, 1972

(254)

EUGENE T. ROSSIDES,

Assistant Secretary of the Treasury

[Published in the Federal Register February 16, 1972 (37 F.R. 3455)]

Department of the Treasury, Bureau of Customs

STANDARDS FOR CARGO SECURITY

PHYSICAL SECURITY STANDARDS

All cargo handling and storage facilities should provide a physical barrier against unauthorized access to cargo. Usually this will require a covered structure with walls, and apertures which can be securely closed and locked. In addition, fencing may be needed:

1. To prevent unauthorized persons and vehicles from entering cargo storage and handling areas,
2. As sole protection for open storage of bulk cargo or large articles which cannot be easily pilfered or removed without mechanical handling equipment or which have their own inherent security (containers).

BUILDINGS

General Standard

All buildings used to house cargo and associated support buildings should be constructed of materials which resist unlawful entry. The integrity of the structure must be maintained by periodic inspection and repair. Security protection should be provided for all doors and windows.

Recommended Specifications

1. Equip all exterior doors and windows with locks.
2. Protect all windows through which entry can be made from ground level by safety glass wire mesh or bars.
3. Similarly safeguard all glassed-in areas where shipping documents are processed.
4. Construct all delivery and receiving doors of steel or other material that will prevent or deter unlawful entry and keep them closed and locked when not in use.
5. Where fencing is impractical or guards insufficient, equip the building with an intrusion detection or alarm system.
6. Inspections must insure particularly that there are no avenues for surreptitious entry

through floors, roof, or adjacent buildings.

FENCING

General Standard

Where cargo security is dependent upon fencing, it should enclose an area around cargo and support buildings sufficient to provide maneuvering space for pick-up and delivery vehicles and should be set off a sufficient distance on all sides from the building or exterior stored cargo. The fence line must be inspected regularly for integrity and any damage promptly repaired.

Recommended Specifications

1. Install chain link type fencing with at least nine gauge, two-inch mesh and at least 8 feet high (not including a barbed wire extension). If the level on which the fence is constructed is lower than the area outside the fence line, increase the height of the fence to provide an effective 8-foot fence at all points.
2. Top the fence with a 2-foot barbed wire extension, consisting of 3 strands of barbed wire, properly spaced and angled outward.
3. Place fence posts on the inside of the fence and secure them in a cement foundation at least 2 feet deep.
4. Ensure that objects or persons cannot pass beneath the fencing by providing:
 - a. Cement aprons not less than 6 inches thick, or
 - b. Frame piping, or
 - c. U-shaped stakes driven approximately 2 feet into the ground.
5. Avoid any condition which compromises the fence line. Prohibit the placing of containers, dunnage, cargo vehicles, or any other item that may facilitate unlawful entry adjacent to the fence line.
6. Where necessary, install bumpers or fence guards to prevent damage by vehicles.

GATES

General Standard

The number of gates in fences should be the minimum necessary for access. All fence gates should be at least as substantial as the fence. Gates through which vehicles or personnel enter or exit should be manned or under observation by management or security personnel.

Recommended Specifications

1. Equip gates with a deadlocking bolt or a substantially equivalent lock which does not require use of a chain. All hardware connecting the lock to the gate should be strong enough to withstand constant use and attempts to defeat the locking device.
2. Construct swing-type gates so that they may be secured to the ground when closed.
3. Separate gates for personnel and vehicle traffic are desirable.

GATE HOUSES

General Standard

Operators of facilities handling a substantial volume of cargo should maintain a manned gatehouse at all vehicle entrances and exits during business hours.

Recommended Specifications

1. Set the gatehouse back from the gate so that vehicles can be stopped and examined on terminal property.

2. Equip the gate house with a telephone or other communication system.
3. Clear the area around the gate house of any encumbrances that restrict the guard's line of vision.
4. Post prominently on the exterior of all gate houses signs advising drivers and visitors of the conditions of entry. Include in conditions of entry a notice that all vehicles and personnel entering the area are subject to search.

PARKING

General Standard

Private passenger vehicles should be prohibited from parking in cargo areas or immediately adjacent to cargo storage buildings. Access to employee parking areas should be subject to security controls.

Recommended Specifications

1. Locate parking areas outside of fenced operational areas or at least a substantial distance from cargo handling and storage areas or buildings and support buildings.
2. Require employees exiting to the parking area from the cargo area to pass through an area under the supervision of management or security personnel. Require employees desiring to return to their private vehicles during hours of employment to notify management and/or security personnel.
3. Allow parking in employee parking areas by permit only. Maintain a record of each issued permit, listing the vehicle registration number, model, color and year. The permit should consist of a numbered decal, tag, sticker, or sign placed in a uniform location on the vehicle.
4. Issue to vendors and other visitors temporary parking permits which allow parking in a designated area under security controls.

LIGHTING

General Standard

Adequate lighting should be provided for the following areas:

1. Entrances, exits and around gate houses.
2. Cargo areas, including container, trailer, aircraft and rail-car holding areas.
3. Along fence lines and string pieces.
4. Parking areas.

Recommended Specifications

1. The Society of Illuminating Engineers recommends the following light intensities measured at ground level:
 - a. Vehicle and pedestrian areas-----2.0 foot candles
 - b. Vital structures and other sensitive areas----2.0 foot candles
 - c. Unattended outdoor parking areas-----1.0 foot candle
2. Illuminate all vehicle and pedestrian gates, perimeter fence lines, and other outer areas with mercury vapor, sodium vapor, power quartz lamps or substantially similar high intensity lighting, employing a minimum of 400 watts per fixture. Locate lights 30 feet above ground level and properly spaced to provide the appropriate light intensity for the area to be illuminated.
3. Establish a system of planned maintenance.
4. Protect lighting subject to vandalism by wire screening or other substantially equivalent means.

LOCKS, LOCKING DEVICES, AND KEY CONTROL

General Standard

Locks or locking devices used on buildings, gates and equipment should be so constructed as to provide positive protection against unauthorized entry. The issuance of all locks and keys should be controlled by management or security personnel.

Recommended Specifications

1. Use only locks having (a) multiple pin tumblers, (b) deadlocking bolts, (c) interchangeable cores, and (d) serial numbers.
2. To facilitate detection of unauthorized locks, use only locks of standard manufacture displaying the owner's company name.
3. Number all keys and obtain a signature from the recipient when issued. Maintain a control file for all keys. Restrict the distribution of master keys to persons whose responsibilities require them to have one.
4. Safeguard all un-issued or duplicate keys.
5. Remove and secure keys from cargo handling equipment and vehicles when not in actual use.

HIGH-RISK CARGO

General Standard

Adequate space capable of being locked, sealed, or otherwise secured for storage of high value cargo and packages which have been broken prior to or during the course of unloading must be provided at each cargo handling building. When such cargo must be transported a substantial distance from the point of unloading to the special security area, vehicles capable of being locked or otherwise secured must be used.*

Recommended Specifications

1. Construct special security rooms, cribs or vaults so as to resist forcible entry on all sides and from underneath and overhead.
2. Locate such special security areas, where possible, so that management and/or security personnel may keep them under continuous observation. Otherwise, install an alarm system or provide for inspection at frequent intervals.
3. Release merchandise from such an area only in the presence of authorized supervisors and/or security personnel.
4. Log all movements of merchandise in or out of a special security area, showing date, time, condition of cargo upon receipt, name of truckman and company making pick-up and registration number of equipment used.

PROCEDURAL SECURITY STANDARDS

PERSONNEL SCREENING

General Standard

Operators of cargo handling facilities should conduct employment screening of prospective employees. **

*The standards are required by Customs Regulation (19 C.F.R. 4.30).

**Customs regulations already require international carriers, proprietors of bonded warehouses, and customhouse brokers to submit employee lists upon request from the District Director of Customs. Such lists must contain the name, address, social security number, and date

and place of birth of each employee and be kept up to date (Customs Regulations, 19, C.F.R. 4.30 (m), 19.3 and 111.28).

Recommended Specifications

1. Require all personnel, including maintenance and clerical personnel, who will have access to cargo areas to submit a detailed employment application which contains a photograph of the applicant and lists his residences and prior employment for the preceding 10 yrs.
2. Screen all such employment applicants for:
 - (a) verification of address and prior employment
 - (b) credit record and,
 - (c) if possible, criminal record.

SECURITY PERSONNEL

General Standard

Operators of cargo handling facilities should employ a Security Officer or assign a particular officer of the firm to be responsible for security. All operators handling a substantial volume of international cargo should provide guards to protect the cargo.

Recommended Specifications

1. Employ the number of guards required to provide adequate security for the size of each facility and the volume of cargo handled. Alarm systems, closed circuit television and other security devices may reduce the number of guards needed.
2. Train all company employee guard forces or insure that contract guard forces are trained in:
 - (a) Methods of patrolling terminals and warehouses.
 - (b) Use of firearms and other equipment that may be furnished.
 - (c) Report writing, log and record keeping.
 - (d) Identification of security problems and specific trouble areas.
3. Equip guard forces with uniforms which are complete, distinctive and authoritative in appearance.
4. Provide firearms, vehicles, communications systems, and other equipment deemed necessary for the successful performance of the guard function.
5. Insist on physical fitness as a prime consideration in selecting a guard force. Require guards to undergo self-defense training similar to that of police agencies. Require a physical examination at least once a year.
6. Furnish each guard a manual covering operating procedures and standards of conduct, and a clear statement of what management expects of him.

COMMUNICATIONS

General Standard

Adequate and reliable communications between elements of the terminal security force and from the security force to local police should be provided.

Recommended Specifications

1. Provide security personnel with a telephone at fixed posts or two-way radio, intercom or other type of equipment providing voice communication capability within the company.
2. Arrange assured means (telephone, radio, or special alarm line) for summoning assistance from local police forces.

IDENTIFICATION SYSTEM

General Standard

All operators of facilities handling a substantial volume of cargo should employ an identification card system to identify personnel authorized to enter cargo and document processing areas.

Recommended Specifications

1. Include on the I.D. card: (a) physical description or, preferably, a color photograph of the holder, (b) name and address, (c) social security number, (d) date of birth, (e) employer's Customs license number, if any, (f) signature of holder, and (g) reasonable expiration date.
2. Laminate all cards to prevent alterations and assign each card a control number.
3. Recover I.D. cards from terminated employees.
4. Require each employee to display his I.D. card to gain access to the facility, to cargo areas within the facility, and to areas where shipping documents are processed. Preferably, the I.D. card should be displayed so that it is visible at all times that the employee is within the facility.

INDEPENDENT CONTRACTORS

General Standard

The background and corporate structure of independent contractors providing janitorial service, refuse disposal, or other services should be verified. Access by independent contractors to the facility should be under security controls.

Recommended Specifications

1. Periodically examine independent contractor vehicles which are parked in or near cargo areas.
2. Permit independent contractor employees to enter only those areas necessary for their particular work; permit them access to cargo and areas where shipping documents are located only under the supervision of security and/or management personnel.
3. Require independent contractors to display identification similar to that required by the facility for its own employees.

CARGO QUANTITY CONTROLS

General Standard

Cargo should be tallied at time of delivery to the consignee or his agent. In the event of any discrepancies at time of delivery, a U.S. Customs Form 5931 or a duplicate copy of the amended cargo manifest must be completed and submitted to Customs by the carrier or his agent.*

Recommended Specifications

1. To facilitate accurate delivery of cargo, terminal operators should maintain and continuously up-date a location chart or list of all cargo received.
2. Segregate imported cargo, cargo for export, and domestic cargo.
3. Carriers should arrange procedures with each terminal operator to insure that all overages and shortages are reported to Customs.

DELIVERY PROCEDURES

General Standard

Gate passes should be issued to truckmen and other onward carriers to control and identify those authorized to enter the facility. Verification of the identity and authority of the carrier requesting delivery of cargo should be made prior to the cargos release.

Recommended Specifications

1. Require truckmen to submit proper personal identification (such as a drivers license or Customs I.D. card) and a vehicle registration certificate before being issued a gate pass and being permitted to enter the facility; require them to surrender the gate pass before leaving the facility.
2. Seal containers and trailers and note the seal number on the gate pass before delivery is effected. Verify the seal number when the gate pass is surrendered at the gate.
3. Require the company name of all onward carriers to be clearly shown on all equipment. Do not accept temporary placards or cardboard signs as proper identification of equipment. Require carriers using leased equipment to submit the lease agreement for inspection and note the leasing company's name on the delivery order.
4. Release cargo only to carrier specified in the delivery order unless a release authorizing delivery to another carrier, signed by the original carrier, is presented and verified. Accept only original copies of the delivery or pick-up orders.
5. Personnel processing prelodged delivery or pick-up orders should verify the identity of the truckman and the trucking company before releasing the pick-up order. Limit access to areas where such documentation is processed or held to authorized personnel and rigorously safeguard all shipping documents from theft or unauthorized observation. *All international carriers are required by Customs Regulations to make discrepancy reports (19 C.F.R. 4.12(a), 6.7(h), 15.8, 18.2(b), 18.6(b), (c), 123.9).
6. Conduct delivery and receiving operations at separate docks or doors, if feasible.
7. Tally salvage and accumulated unclaimed cargo at the time of delivery and have management representatives and/or security personnel verify that only properly released items are included. If a terminal has truck scales, weigh the vehicle used to remove bulk salvage cargo (bales and drums) when empty and loaded.

CONTAINERIZED SHIPMENTS AND SEALS

General Standard

All containers, trailers, rail cars and air cargo lockers entering or leaving a facility should be sealed. Mounted and high value containerized shipments should receive special security attention.

Recommended Specifications

1. Inspect seals whenever a sealed containerized shipment enters or leaves a facility. If seals are not intact or there is evidence of tampering or the seal numbers are incorrect, notify security and/or management personnel and tally the cargo.
2. Seal unsealed containerized shipments at the point of entry to the facility and note the seal number on the shipping documents. Seal all containerized shipments leaving the facility and note the seal number on the shipping documents.
3. Release seals to as few persons as possible. Require all persons handling seals to maintain strict control of the seals assigned and to store them in a secure place.

4. Maintain a seal distribution log which indicates to whom seals have been released.
5. Where possible, secure containers by butting or marrying their door ends against each other. However, do not butt them against a perimeter fence or building wall if that will compromise the protection provided by the fence or wall. In stacking containers, place those containing high value merchandise on top.
6. Locate high value merchandise in mounted containers or trailers in a special security holding area where it can be observed by management and/or security personnel.
7. When containers are mounted on frames, secure the fifth-wheel by a pin-lock which meets the minimum standards for locks and is constructed to withstand normal abuse from equipment. Hold designated management and/or security personnel responsible for storage and control of pin-locks.
8. Restrict access to special security holding areas and permit the release of containers or trailers from such areas only in the presence of management representatives and/or security personnel.
9. Log movements of containers in or out of a special security holding area, showing: date, time, seal number, name of truckman and company making pick-up, and registration number of equipment used.

SECURITY EDUCATION

General Standards

Management should institute a security awareness program for all personnel.

Recommended Specifications

1. Conduct a program of periodic security seminars for all employees involved in cargo handling and documentation processing, stressing the importance of:
 - (a) Maintaining legible and accurate cargo tallies,
 - (b) Processing only legible documents,
 - (c) Writing only in ink or ball point pen,
 - (d) Completing all information required by shipping documents,
 - (e) Obtaining clearly written signatures,
 - (f) Safeguarding the confidentiality of shipping and entry documents, and
 - (g) Maintaining good cargo security generally.
2. Include in the security awareness program posters, stickers, payroll stuffers, monetary incentives, and properly worded reward signs. (Appropriate signs can be obtained from the CBP field offices.)