

**DEPARTMENT OF HOMELAND SECURITY****Bureau of Customs and Border Protection****DEPARTMENT OF THE TREASURY****19 CFR Part 10**

[Docket No. USCBP-2009-0015; CBP Dec. 09-46]

RIN 1505-AC13

**“Imported Directly” Requirement Under the United States—Bahrain Free Trade Agreement****AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, interim amendments to the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) which were published in the **Federal Register** on May 22, 2009, as CBP Dec. 09-17 to change certain provisions relating to the requirement under the United States-Bahrain Free Trade Agreement (BFTA) that a good must be “imported directly” from one BFTA Party to the other Party to qualify for preferential tariff treatment. The change involved removing the condition that a good passing through the territory of an intermediate country while en route from a Party to the other Party must remain under the control of the customs authority of the intermediate country. This change more closely conformed these regulatory provisions to the BFTA and the BFTA implementing statute.

**DATES:** This final rule is effective January 28, 2010.**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325-0041.**SUPPLEMENTARY INFORMATION:****Background**

On September 14, 2004, the United States and the Kingdom of Bahrain (the Parties) signed the U.S.-Bahrain Free Trade Agreement (BFTA). The provisions of the BFTA were adopted by the United States with the enactment on January 11, 2006, of the United States-Bahrain Free Trade Area Implementation Act (the Act), Public Law 109-169, 119 Stat. 3581 (19 U.S.C. 3805 note).

On October 16, 2007, CBP published CBP Dec. 07-81 in the **Federal Register**

(72 FR 58511), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the BFTA. The majority of the BFTA implementing regulations were included within new subpart N in part 10 of the CBP regulations (19 CFR subpart N, part 10). In CBP Dec. 08-28, published in the **Federal Register** on July 23, 2008 (73 FR 42679), CBP adopted the interim regulations set forth in CBP Dec. 07-81 as a final rule with two technical corrections.

Section 10.817(a) of the CBP regulations implementing the BFTA sets forth the basic requirement, found in Article 4.1 of the BFTA, that a good must be “imported directly” from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. In circumstances in which a shipment passes through the territory of a non-Party, § 10.817(a)(2) provided (prior to the publication of the interim amendments set forth in CBP Dec. 09-17 on May 22, 2009) that a good will be considered to be “imported directly” only if the good: (i) Remained under the control of the customs authority of the non-Party; and (ii) did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than certain specified minor operations. Nearly identical language to that found in § 10.817(a) appeared in § 10.822(a), relating to the application of the “imported directly” requirement to certain non-originating textile and apparel goods that qualify for preferential tariff treatment under an applicable tariff preference level (TPL).

Article 4.9 of the BFTA provides that a good shall not be considered to be “imported directly” from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party. Section 202(g) of the Act mirrors the language in Article 4.9 of the Agreement. Neither the BFTA nor the Act includes a requirement that a good must remain under the control of the customs authority of a non-Party to qualify as having met the “imported directly” requirement when the good passes through the territory of a non-Party.

To more closely conform paragraph (a)(2) of §§ 10.817 and 10.822, CBP regulations, to the Agreement and the Act, CBP amended these regulatory provisions on an interim basis in CBP

Dec. 09-17, published in the **Federal Register** on May 22, 2009 (74 FR 23950), by removing the “customs control” requirement. Specifically, CBP Dec. 09-17 removed paragraph (a)(2)(i) of §§ 10.817 and 10.822 and incorporated the text of paragraph (a)(2)(ii) of §§ 10.817 and 10.822 into the paragraph (a)(2) introductory text of those sections.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on May 22, 2009, CBP Dec. 09-17 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on July 21, 2009. No comments were received.

**Conclusion**

Accordingly, CBP has decided to adopt the interim rule published on May 22, 2009, without change.

**Executive Order 12866**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

**Regulatory Flexibility Act**

CBP Dec. 09-17 was published as an interim rule rather than as a notice of proposed rulemaking because, as noted above, the interim amendments involved a foreign affairs function of the United States. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

**Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

**List of Subjects in 19 CFR Part 10**

Customs duties and inspection, Exports, Imports, Preference programs, Trade agreements.

**Amendments to the CBP Regulations**

■ Accordingly, the interim rule amending part 10 of the CBP regulations

(19 CFR part 10), which was published at 74 FR 23950 on May 22, 2009, is adopted as a final rule without change.

Approved: December 22, 2009.

**Jayson P. Ahern,**

*Acting Commissioner, U.S. Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Parts 19 and 144

[Docket No. USCBP-2007-0080; CBP Dec. 09-48]

RIN 1505-AB85

### Class 9 Bonded Warehouse Procedures

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with modifications set forth in this document, amendments proposed to title 19 of the Code of Federal Regulations with respect to the requirements applicable to the operation of Class 9 bonded warehouses, which are also known as “duty-free sales enterprises” or “duty-free stores.” The amendments in this document will extend the blanket withdrawal procedure for duty-free merchandise under certain circumstances and expand and create a uniform time period for Class 9 proprietors to file an entry, provide written confirmation of certain shortages, overages, and damages, and to pay duties, taxes, and interest on overages and shortages. The amendments in this document will also permit Class 9 warehouses to utilize existing technological systems more effectively. In addition, this document sets forth technical amendments to the applicable regulations to extend the time period for which merchandise may remain in a bonded warehouse under certain circumstances. The amendments will facilitate the efficient operation of Class 9 warehouses and also ensure adequate records are maintained for U.S. Customs and Border Protection (“CBP”) trade enforcement purposes.

**DATES:** *Effective Date:* The final rule is effective on January 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gary Rosenthal, Office of Field Operations, (202) 344-2673, or Gary Schreffler, Office of Field Operations, (202) 344-1535.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 1555 of title 19 of the United States Code (19 U.S.C. 1555) sets forth provisions governing the establishment and operation of customs bonded warehouses. Section 1555(b) provides for a type of bonded warehouse, Class 9, also called a “duty-free sales enterprise” or “duty-free store.” As defined in § 1555(b)(8)(D), duty-free sales enterprise means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory of the United States. The regulations implementing § 1555(b), and which govern the operation of duty-free stores, are found within parts 19 and 144 of title 19 of the Code of Federal Regulations (19 CFR parts 19 and 144).

#### Notice of Proposed Rulemaking

On January 16, 2008, a notice of proposed rulemaking was published in the **Federal Register** (73 FR 2843; the “NPRM”) by U.S. Customs and Border Protection (“CBP”) that proposed to amend certain regulations governing the operation of duty-free stores in order to align the regulations with actual business practices and the use of modern technologies. The amendments were proposed in order to facilitate the operation of duty-free stores in a technological environment by streamlining outdated processes and requirements while ensuring adequate records are maintained for audit purposes.

In the NPRM, CBP specifically proposed amendments to §§ 19.6, 19.12, 19.36, and 144.37 of title 19 of the CFR (19 CFR 19.6, 19.12, 19.36, and 144.37). Section 19.6 describes the requirements for depositing merchandise into or withdrawing merchandise from a warehouse, including the requirements pertaining to blanket permits to withdraw. The proposed amendments to § 19.6(d)(1)(ii) would allow the appropriate Director, Field Operations, to extend the blanket withdrawal procedure in situations where the Class 9 warehouse and destination port are located within that Director’s authority.

Section 19.12 provides for inventory control and recordkeeping systems. The NPRM proposed to modify § 19.12(d)(3), which sets forth the requirements for the accounting of merchandise in bonded warehouses and for the reporting of inventory theft, shortages, overages, and damages. In order to provide adequate time to comply with reporting and filing requirements, the NPRM proposed to modify § 19.12(d)(3) in order to afford Class 9 proprietors with 20 calendar days to provide written confirmation of any reported shortages, overages, or damages, and to require that an entry for warehouse be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery.

In addition, the NPRM proposed to modify § 19.12(h)(2), which lists the information required for the annual reconciliation report, in order to set forth special reporting rules for Class 9 warehouses. In this regard, under the proposal, § 19.12(h)(2)(ii) would allow for a reduced reporting requirement for Class 9 warehouse proprietors in cases where the proprietor successfully demonstrates, by application to the appropriate CBP port director, that shortages would be reported within 20 days of discovery. If the application were approved by the port director, the Class 9 warehouse proprietor would be permitted to submit a report that that sets forth the company name; address of the warehouse; class of warehouse; dates when physical inventories and cycle counts occur; dates when resulting shortages and overages are reported to CBP; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

Section 19.36 sets forth the requirements for duty-free store operations, including guidance on the type of merchandise permitted in the sales or crib area of a Class 9 warehouse. The NPRM proposed to amend § 19.36(e) in order to provide an alternative to marking merchandise for Class 9 warehouse proprietors who maintain an electronic system capable of immediately identifying “DUTY-PAID” or “U.S.-ORIGIN” merchandise. In addition, the NPRM proposed changes that would ease the current requirement that conditionally duty-free merchandise either be physically separated from other merchandise, or that the other merchandise be identified or marked as “DUTY-PAID” or “U.S. ORIGIN,” for those Class 9 warehouse proprietors who can immediately identify the duty status of goods through the use of an electronic system.

Section 144.37 sets forth the procedures for withdrawing