

**§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.**

All wheat shall be stored by class and grade according to the Official Grain Standards of the United States or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of identity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot.

CROSS REFERENCE: For regulations relating to the Official U.S. Standards for Grain, see 7 CFR part 810.

**§ 19.32 Wheat manipulation; reconditioning.**

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of section 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the port director. All such operations shall be performed under Customs supervision adequate to preclude unauthorized access to the wheat.

**§ 19.33 General order; transportation in bond.**

The provisions of §§ 19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation.

**§ 19.34 Customs supervision.**

Port directors shall exercise such supervision and control over the transactions covered by §§ 19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of Customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous Customs custody shall maintain such records as will enable Customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to Customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 5 years from the date of the transaction. Port directors shall from time to time request the appropriate Customs officer to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous Customs custody as may be deemed necessary to ascertain whether there has been any failure to comply with the applicable Customs laws and regulations.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979; T.D. 82-204, 47 FR 49374, Nov. 1, 1982]

DUTY-FREE STORES

SOURCE: Sections 19.35 through 19.39 were issued by T.D. 92-81, 57 FR 37698, Aug. 20, 1992, unless otherwise noted.

**§ 19.35 Establishment of duty-free stores (Class 9 warehouses).**

(a) *General.* A class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free

merchandise by individuals departing the Customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. "Conditionally duty-free merchandise" means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36-19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A class 9 warehouse may be established or located only (1) within the same port of entry from which a purchaser of duty-free store merchandise departs the Customs territory, or (2) within 25 statute miles from the exit point through which the purchaser of duty-free store merchandise departs the Customs territory.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise and requested by the proprietor may be treated by Customs as one location if:

(1) The proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location; and

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory or inventory records must be updated no less frequently than at the end of each business day to reflect that day's activity.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means an area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of

a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory by passing through a U.S. Customs inspection facility. The port director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax with personal exemption; and,

(3) Is subject to the customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.4(b)(6) of this part shall be applied to the security of the sales rooms and cribs by the port director. The proprietor shall establish procedures to safeguard the merchandise so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* 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.

[T.D. 92-81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97-19, 62 FR 15839, Apr. 3, 1997]

**§ 19.36 Requirements for duty-free store operations.**

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in § 144.37(h) of this chapter may be delivered only to individuals departing from the Customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the port director as provided in § 144.39 of this chapter.

(b) *Procedures required.* Each duty-free store shall establish, maintain, and follow written procedures to provide reasonable assurance to the port director that conditionally duty-free merchandise purchased therein will be exported from the Customs territory. A copy of any change in the procedure will be provided to the port director before it is implemented. However, receipt by Customs of the procedures of any change thereto shall not be construed as approval by Customs of the procedures. The port director is responsible for ensuring that each enterprise has established guidelines with Customs and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The port director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restrictions.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point shall establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consump-

tion as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto shall be provided to the port director prior to implementation. However, receipt of the written restrictions by Customs shall not be construed as approval by Customs of the restrictions. The port director may require any change in the restrictions deemed necessary to conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the port director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the port director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and will not be extended to all merchandise of the responsible store proprietor unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing.* Only conditionally duty-free merchandise may be placed in a bonded storage area of a Class 9 warehouse. However, domestic merchandise and merchandise which was previously entered or withdrawn for consumption, may be brought into the bonded sales or crib area of a Class 9 warehouse for display and sale, and in the case of a crib, for delivery to purchasers. However, such merchandise must be either identified or marked "DUTY-PAID" or "U.S.-ORIGIN", or similar markings,