

# U.S. Customs Service

## *Proposed Rulemaking*

19 CFR Part 146

RIN 1515-AC74

### EXPANDED WEEKLY ENTRY PROCEDURE FOR FOREIGN TRADE ZONES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations, in conformance with the Trade and Development Act of 2000, to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly-line type production operations. Under both the expanded procedure as well as the existing procedure for assembly-line type production operations, weekly entries covering estimated removals of merchandise from a foreign trade zone for any consecutive 7-day period, and the associated entry summaries, would have to be filed exclusively through the Automated Broker Interface, with duties, fees and taxes being scheduled for payment through the Automated Clearinghouse. The weekly entry is treated as a single entry or release of merchandise for purposes of the merchandise processing fee (MPF) that Customs assesses on importers in order to offset administrative costs incurred in processing imported merchandise that is formally entered or released.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Debbie Scott, Office of Field Operations, (202-927-1962).

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u) (the “FTZA”), provides for the establishment and regulation of foreign trade zones. Foreign trade zones are secured areas to which foreign and domestic merchandise (except that prohibited by law) may be brought for the purposes enumerated in the FTZA without being subject to the customs laws of the U.S. Foreign trade zones, by virtue of being exempt from the customs laws, are intended to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), sets forth the documentation and recordkeeping requirements governing, among other things, the admission of merchandise into a zone, its manipulation, manufacture, storage, destruction, or exhibition while in the zone, and its entry or removal from the zone.

Generally speaking, the FTZA provides that when foreign merchandise is sent from a zone into customs territory, it is subject to the laws and regulations of the United States affecting imported merchandise (19 U.S.C. 81c(a)). This would include customs law governing the entry of imported merchandise. To this end, section 1484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), sets forth the procedures generally governing the entry of imported merchandise for customs purposes.

Under 19 U.S.C. 1484, Customs has permitted a limited weekly entry procedure for foreign trade zones since May 12, 1986 (as authorized in T.D. 86–16, 51 FR 5040). This limited weekly entry procedure, appearing in § 146.63(c)(1), Customs Regulations (19 CFR 146.63(c)(1)), is restricted to merchandise that was manufactured or changed into its final form just shortly (within 24 hours) before physical transfer from the zone.

It is noted that further general support for the weekly entry procedure was furnished when 19 U.S.C. 1484 was subsequently amended by section 637 of the Customs Modernization Act (included as Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, enacted on December 8, 1993).

EXPANDED WEEKLY ENTRY PROCEDURE; AMENDMENT OF SECTION 1484  
BY TRADE AND DEVELOPMENT ACT OF 2000

The Customs entry law, 19 U.S.C. 1484, has now been further amended by section 410 of the Trade and Development Act of 2000 (Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000). Section 410 of this Act adds a new paragraph (i) to section 1484 (19 U.S.C. 1484(i)), that specifically provides for an expanded weekly entry procedure for foreign trade zones under certain limitations. The expanded weekly entry procedure under the statute is inextricably tied, as further discussed below, to the assessment of the merchandise processing fee which only applies to merchandise entered for consumption; thus, this entry procedure is limited to merchandise that is to be removed from a zone for consumption.

Under 19 U.S.C. 1484(i)(1), the expanded weekly entry procedure covers all merchandise (including merchandise of different classes, types and categories), with the exception of merchandise the entry of which is prohibited by law and merchandise for which the filing of an entry summary is required before it may be released from customs custody. The effect of section 1484(i) is to expand the weekly entry system beyond its current coverage, primarily to allow goods stored in a zone for the purpose of warehouse and distribution to be removed from the zone under a weekly entry process.

Thus, merchandise falling within the expanded procedure of section 1484(i)(1) that is to be removed from a zone during any 7-day period (not limited to a calendar week) may be the subject of a single estimated entry or release.

In accordance with 19 U.S.C. 1484(i)(2)(A)(i) and (ii), weekly entries under the expanded weekly entry program would be required to be filed electronically through the Automated Broker Interface (ABI). The party making entry who chooses to file a weekly entry from a zone would have to do so using ABI, or employ an ABI-qualified Customs broker for this purpose.

The electronic entry would have to contain the data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period. As provided in section 1484(i)(1), this estimated entry would need to be filed on or before the first day of the 7-day period in which the merchandise is to be removed from the zone.

An electronic entry summary containing the data equivalent to that required on Customs Form 7501 would be filed within 10 working days after the first day of the 7-day period covered by the electronic entry, with payment of applicable duties and taxes likewise scheduled for no later than 10 working days after the date of entry, using the Automated Clearinghouse (ACH) as prescribed in § 24.25, Customs Regulations (19 CFR 24.25).

In addition, under 19 U.S.C. 1484(i)(2)(B), the operator and/or the user of the zone, as applicable, would be required to provide accounting, transportation, and related controls over merchandise subject to the weekly entry procedure that are adequate to protect the revenue and meet the requirements of other Federal agencies.

In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4, Customs Regulations (19 CFR 146.4), would have to supervise and monitor the movement of merchandise, and provide for its proper storage and handling in the zone. The operator would also be required to maintain inventory records that accurately accounted for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and otherwise comply with the requirements of § 146.4 and subpart B, Customs Regulations (19 CFR part 146, subpart B). Also, the person making entry (zone user) would have to keep inventory records

with respect to the merchandise and its handling and/or processing in the zone that, if not computerized, would need to be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice.

#### APPLICATION OF MERCHANDISE PROCESSING FEE TO WEEKLY ENTRY

The estimated weekly entry or release is treated under section 1484(i)(1) as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under section 13031(a)(9)(A) of the Consolidated Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c(a)(9)(A)), and all fee exclusions and limitations of section 13031 of the COBRA also apply to the weekly entry or release, including the maximum and minimum fee amounts under section 13031(b)(8)(A)(i) (19 U.S.C. 58c(b)(8)(A)(i)).

Under 19 U.S.C. 58c(a)(9)(A), the MPF is the fee that Customs assesses on importers in order to offset administrative costs (salaries and expenses) that Customs incurs in connection with the processing of imported merchandise that is formally entered or released. Except as otherwise provided, merchandise that is formally entered or released is currently subject to an ad valorem MPF of .21 percent (19 U.S.C. 58c(a)(9)(A); and § 24.23(b)(1)(i)(A), Customs Regulations (19 CFR 24.23(b)(1)(i)(A))). However, on any one weekly entry or release, the MPF may not exceed the maximum amount of \$485, subject to certain provisions not here relevant (19 U.S.C. 58c(a)(9)(B)(i); 19 U.S.C. 58c(b)(8)(A)(i); and § 24.23(b)(1)(i)(B), Customs Regulations (19 CFR 24.23(b)(1)(i)(B))).

It should be observed in this regard that, by a document published in the Federal Register (62 FR 12129) on March 14, 1997, Customs had previously proposed a similar expansion of the weekly entry procedure for foreign trade zones, under the then-existing general authority of 19 U.S.C. 1484; but, by a document published in the Federal Register (64 FR 13142) on March 17, 1999, Customs withdrew this proposal.

#### CONCLUSION

Accordingly, based upon the foregoing, this document proposes to amend § 146.63(c), Customs Regulations (19 CFR 146.63(c)), to implement 19 U.S.C. 1484(i), by adding a provision covering the expanded weekly entry procedure for foreign trade zones. The principal purpose of this proposed rule is to require electronic entry filing under the expanded procedure pursuant to 19 U.S.C. 1484(i)(2)(A). In addition, for the sake of consistency and administrative efficiency, Customs has determined that the existing weekly entry procedure for certain manufactured articles in § 146.63(c)(1) should similarly be revised to require electronic entry filing and to provide that a weekly entry under § 146.63(c)(1) may cover any 7-day period, and need no longer be confined to a calendar week. Also, under the proposed rule, if requested by Customs, the electronic data submitted would need to include the equivalent of a *pro forma* invoice or schedule, showing the estimated number

of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

#### COMMENTS

Before adopting this proposed rule as final, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9<sup>th</sup> Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

#### THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed amendments are essentially intended to conform the Customs Regulations with statutory law, including the provision in the law that allows a requirement for electronic entry filing. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do the proposed amendments meet the criteria for a “significant regulatory action” under E.O. 12866.

#### PAPERWORK REDUCTION ACT

The collections of information contained in this proposed rule have already been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers: 1515-0065 (Requirement to make entry; Entry summary and continuation sheet); and 1515-0214 (General recordkeeping and record production requirements). This proposed rule would not make any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

#### LIST OF SUBJECTS IN 19 CFR PART 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

#### PROPOSED AMENDMENTS TO THE REGULATIONS

Part 146, Customs Regulations (19 CFR part 146), is proposed to be amended as set forth below.

## PART 146—FOREIGN TRADE ZONES

1. Revise the authority citation for part 146 to read as follows:

**Authority:** 19 U.S.C. 66, 81a–u, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1484(i), 1623, 1624.

2. Amend § 146.63 by revising paragraph (c) to read as set forth below:

**§ 146.63 Entry for consumption.**

\* \* \* \* \*

(c) *Estimated activity.* (1) *Weekly manufacturing.* (i) *Electronic entry required.* When any merchandise is manufactured or its physical condition as entered is otherwise changed (exclusive of packing) in a zone within 24 hours before physical transfer from the zone for consumption, the person making entry may file an entry for the estimated removals of such merchandise during any consecutive 7-day period. The 7-day period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request.* If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(2) *Other weekly entries.* (i) *Electronic entry required.* In addition to the merchandise already covered under paragraph (c)(1) of this section, the person making entry may file an estimated entry for all merchandise, including merchandise of different classes, types, and categories, except as provided in paragraph (c)(2)(ii) of this section, that is to be removed from a zone during any consecutive 7-day period. The weekly period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request.* If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(iii) *Excluded merchandise.* The following merchandise is excluded from the weekly entry procedure in paragraph (c)(2)(i) of this section:

(A) Merchandise whose entry is prohibited by law; and

(B) Merchandise for which the filing of an entry summary is required before it may be released from Customs custody.

(3) *Electronic entry summary.* Under paragraph (c)(1) or (c)(2) of this section, an electronic entry summary containing data equivalent to that required on Customs Form 7501 must be filed within 10 working days after the first day of the 7-day period covered by the electronic entry. The entry summary must be filed electronically through the Automated Broker Interface, with payment of applicable duties and taxes being scheduled, through the Automated Clearinghouse, for no later than 10 working days after the date of entry (see subpart D, part 143, and § 24.25 of this chapter). All merchandise will be dutiable as provided in § 146.65 of this subpart.

(4) *Inventory control.* The operator and/or user of the zone, as applicable, must provide accounting, transportation and related controls over merchandise subject to the weekly entry procedures set forth in paragraphs (c)(1) and (c)(2) of this section that are adequate to protect the revenue and meet the requirements of other Federal agencies, as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(i) *Operator responsibilities; general-purpose zone.* In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4 of this part, must supervise and monitor the movement of the merchandise, and provide for its proper storage and handling in the zone. The operator must also maintain inventory records that accurately account for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and must otherwise comply with the requirements of § 146.4 and subpart B of this part.

(ii) *Person making entry (zone user).* The person making entry for the merchandise (the zone user) must keep inventory records with respect to the merchandise and its handling and/or processing in the zone. If not computerized, the records must be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice (see § 163.6(a) of this chapter).

(5) *Acceptance of weekly entry by port director.* Merchandise covered by an electronic entry made under the provisions of paragraph (c)(1) or (c)(2) of this section will be considered to be entered and may be removed from the zone only when the port director has accepted the entry. The time of entry will be determined as provided in § 141.68 of this chapter. If the actual removals will exceed the estimate for the related 7-day period, the person making entry will file an additional electronic entry as necessary to cover the additional units before their removal from the zone. When estimated removals exceed actual removals, such excess merchandise will not be considered to have been entered or constructively transferred from the zone and will not be included in the entry summary for the estimated entry or release. After acceptance of the weekly entry, and any additional entries as required, individual transfers of merchandise covered by the entry may be made from the zone.

(6) *Application of merchandise processing fee to weekly entry.* Under 19 U.S.C. 1484(i), the estimated weekly entry or release under para-

graph (c)(1) or (c)(2) of this section is treated as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under 19 U.S.C. 58c(a)(9)(A). All fee exclusions and limitations under 19 U.S.C. 58c also apply to the weekly entry or release, including the maximum and minimum fee amounts set forth in 19 U.S.C. 58c(b)(8)(A)(i) (see § 24.23(b)(1)(i) of this chapter).

\* \* \* \* \*

3. In § 146.68(a), in the first sentence, the reference “§ 146.63(c)” is removed, and that the reference “§ 146.63(c)(1)” is added in its place.

ROBERT C. BONNER,  
*Commissioner of Customs.*

Approved: July 19, 2002.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, July 25, 2002 (67 FR 48594)]