

excluding that airspace within the Durango, CO, Class E airspace area, that airspace within and underlying the Crownpoint, NM, Class E airspace area.

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Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division,
Southwest Region.*

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 118

RIN 1515-AB83

Centralized Examination Stations; Immediate Suspension or Permanent Revocation As Operator Upon Indictment for Any Felony

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations primarily to enable Customs port directors to immediately suspend operations at a Centralized Examination Station (CES) whenever the operator, entity, or other person exercising substantial ownership or control over the operator, is indicted for, convicted of, or has committed acts which would constitute any felony. This document also proposes to make it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. This action is taken in order to protect the public interest and to promote public confidence concerning the integrity of the CES program.

DATES: Comments must be received on or before March 25, 1996.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the U.S. Customs Service, Attn: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Field Operations, Trade Compliance (202) 927-1167.

SUPPLEMENTARY INFORMATION:

Background

In T.D. 93-6 (58 FR 5596) Customs amended the Customs Regulations (19 CFR Ch. I) to create a new part 118 that set forth the regulatory framework for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Regarding the termination of CESs, Customs stated that immediate revocation and cancellation for a criminal act should not be limited to cases involving an actual conviction or admission, and that the only criminal offenses which should result in an immediate revocation and cancellation would be those which involved theft, smuggling, or a theft-connected crime.

On further consideration of the issue of when revocation, cancellation, or suspension of an entity selected to be a CES operator should occur, Customs now believes that if a CES operator, an officer of a corporation which operates a CES, or a person the local "port director" (a new designation reflecting Customs pending field reorganization, the subject of a separate document) determines exercises substantial ownership or control over such operator or corporation is charged with any conduct which is proscribed as criminal, the character and integrity of the particular CES operation becomes questionable and consideration is warranted by the local port director as to whether the operations of the CES facility should be immediately suspended for a temporary period of time, i.e., a period commensurate with the seriousness of the crime charged, pending further investigation or outside adjudication of facts and/or the institution of permanent revocation and cancellation proceedings.

This action is being proposed in order to enhance port directors' ability to protect the public interest and to promote public confidence concerning the integrity of the CES program. Because the CES program centralizes at a particular location several otherwise disparate processes, including cartage, devanning, Customs inspection, sampling, reloading, and returning merchandise to the stream of commerce, and because the number of CES operators is limited (see, T.D. 93-6, 58 FR 5596, 5597 (January 22, 1993), the discussion of comments received concerning the final CES rule), Customs officers must have authority to ensure thorough confidence in the integrity of

CES operators, employees, and premises. Therefore, this proposed rulemaking would provide port directors with additional discretion to decide whether, on a case-by-case basis, particular circumstances and risks involving the listed offenses warrant immediate suspension, proposed revocation and cancellation, both, or neither. This proposal is intended to provide Customs greater flexibility to address the varying situations with appropriate measures reasonably calculated to protect the public interest and to promote public confidence in the CES program.

Accordingly, Customs proposes to amend § 118.21, which provides for the revocation of selection and cancellation of the written agreement to operate a CES. Paragraph (a) will be revised to provide for the immediate suspension of a CES operator's or entity's selection and the written agreement to operate the CES if the local port director finds that (1) the selection and written agreement were obtained through fraud or the misstatement of a material fact; or (2) the CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must at least have probable cause to believe the proscribed acts occurred. When CES operations are suspended or revoked and cancelled by Customs, it will be the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

Paragraph (b) is proposed to be amended by adding a new subparagraph (6) which makes the above-referenced conduct a separate ground for the port director to pursue permanent revocation and cancellation procedures, and revising subparagraph (1) to make more specific that failure to comply with the responsibilities of a CES operator also constitutes a ground for proposed revocation and cancellation.

The circumstance of a change in employment status as not precluding adverse action, formerly provided for under paragraph (a), is made into a new paragraph (c) to make it clear that this consideration is applicable equally to actions regarding immediate suspension and permanent revocation.

Additional Changes to the Regulations

Because of the proposed change to § 118.21 discussed above, conforming changes to other referencing provisions in part 118 must also be made. The following changes are noted in this regard:

Section 118.0

The second sentence of the scope section to part 118 (§ 118.0) is revised to reference the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES for the type conduct specified above.

Section 118.22

Section 118.22 is proposed to be revised to reference the port director's responsibility to provide written notice to the CES operator or entity when the decision to immediately suspend operations has been made.

Section 118.23

Section 118.23 is proposed to be revised to reference the CES operator or entity's right to appeal the port director's decision to immediately suspend CES operations to the Assistant Commissioner of the Office of Field Operations (another new designation reflecting Customs pending field reorganization) or his designee. A sentence is added to make it clear that once a suspension or revocation action takes effect, the CES operator must cease CES operations. Further, where the port director follows an immediate suspension action with proposed permanent revocation and cancellation proceedings, the temporary suspension of CES operations remains in effect during the appeal process.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act

Pursuant to 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, as the current number of centralized examination station operators is small, *i.e.*, less than 200. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, U.S. Customs Service.

However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Imports, Licensing, Reporting and recordkeeping requirements.

Proposed Amendment

For the reasons stated above, it is proposed to amend part 118, Customs Regulations (19 CFR part 118), as set forth below:

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

2. In § 118.0, the second sentence is revised to read as follows:

§ 118.0 Scope

* * * It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the written agreement to operate a CES facility, the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES or to propose the permanent revocation of a CES operator's or entity's selection and cancellation of the written agreement for specified conduct, and the appeal procedures to challenge an immediate suspension or proposed revocation and cancellation action.

* * *

3. In § 118.21:

(a) The heading is revised and the introductory text is republished;

(b) Paragraph (a) is revised;

(c) Paragraph (b)(1) is amended by adding the words "to comply with any of" before the words "the provisions of";

(d) A new paragraph (b)(6) is added; and

(e) A new paragraph (c) is added.

The revisions and additions to read as follows:

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension.* The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to § 118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must at least have probable cause to believe the proscribed acts occurred.

(b) * * *

(6) The CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this subparagraph, the suspension of CES activities remains in effect through the appeal procedures provided under § 118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to indictment or conviction or after committing any acts which would constitute the culpable behavior described under paragraph (a) of this section, will not preclude application of this section, but may be taken into account by the port director in exercising discretion to take adverse action. If the person whose employment status changed remains in a substantial ownership, control, or beneficial relationship with the CES operator, this

factor will also be considered in exercising discretion under this section.

4. Section 118.22 revised to read as follows:

§ 118.22 Notice of immediate suspension or proposed revocation and cancellation action.

Adverse action pursuant to the provisions of § 118.21(a) or (b) is initiated when the port director serves written notice on the operator or entity selected to operate the CES. The notice shall be in the form of a statement specifically setting forth the grounds for the adverse action and shall inform the operator of the appeal procedures under § 118.23 of this part.

5. Section 118.23 revised to read as follows:

§ 118.23 Appeal to the Assistant Commissioner; procedure; status of CES operations.

(a) *Appeal to the Assistant Commissioner.* Appeal of a port director's decision under § 118.21(a) or (b) must be taken to the Assistant Commissioner, Office of Field Operations, within 10 calendar days of receipt of the written notice of the adverse action. The appeal shall be filed in duplicate and shall set forth the CES operator's or entity's responses to the grounds specified by the port director in his written notice letter for the adverse action initiated. The Assistant Commissioner, Office of Field Operations, or his designee, shall render a written decision to the CES operator or entity, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal, unless the period for decision is extended with due notification to the CES operator or entity.

(b) *Status of CES operations during appeal.* During this appeal period, an immediate suspension of a CES operator's or entity's selection and written agreement pursuant to § 118.21(a) of this part shall remain in effect. A proposed revocation of a CES operator's or entity's selection and cancellation of the written agreement pursuant to § 118.21(b)(1)-(5) of this part shall not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the operator.

(c) *Effect of suspension or revocation.* Once a suspension or revocation action takes effect, the CES operator must cease CES operations. However, when CES operations are suspended or revoked and cancelled by Customs, it is the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location

for inspection, as directed by the importer and approved by the port director.

Approved: December 13, 1995.
Michael H. Lane,
Acting Commissioner of Customs.
Dennis M. O'Connell,
Acting Deputy Assistant Secretary of the Treasury.
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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of rescheduling of date for public hearing.

SUMMARY: This document reschedules the date for a public hearing on the proposed rule under Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001-1461 (the Act), relating to revision of the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are "plan assets" for purposes of Title I of the Act. The proposed rule was set forth in a notice of proposed rulemaking published in the Federal Register at 60 FR 66036 (December 20, 1995).

DATES: The public hearing on this proposed rule is rescheduled to Thursday, February 22, 1996, and, if necessary based on the volume of requests by the public to testify, to Friday, February 23, 1996. The hearing will begin at 10:00 a.m. on both days.

ADDRESSES: Written requests to present public testimony concerning the proposed rule should be submitted by February 14, 1996 to: Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Participant Contribution Regulation. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Ave., N.W., Washington, DC 20210. The rescheduled hearing on the proposed

regulation will be held in Room N-3437 A and B, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N-5669, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219-7461) or William W. Taylor, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Rm N-4611, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219-9141). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On December 20, 1995, the Department of Labor (the Department) published a notice of proposed rulemaking in the Federal Register (60 FR 66036) which would revise the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are "plan assets" for purposes of Title I of the Act. In that notice the Department scheduled a public hearing with respect to the proposal, to be held on January 24 and January 25, 1996, and invited interested persons to submit written requests to testify at the hearing.

The Department has received requests from some members of the public for additional time for preparation of testimony on the proposed rule, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice reschedules the public hearing on the proposed rule to Thursday, February 22, 1996 and, if necessary, to Friday, February 23, 1996. Requests to present public testimony should be submitted by February 14. Unless otherwise advised, the Department will assume that persons who have already submitted written requests to testify at the January 24-25 hearing will wish to testify at the hearing rescheduled for February 22-23.

The December 20, 1995 Federal Register notice also stated that written comments concerning the proposed regulation must be received by February 5, 1996. The Department has determined that the February 5 deadline for submission of written comments will continue to apply, notwithstanding the rescheduling of the public hearing.

Notice of Rescheduling of Date for Public Hearing

Notice is hereby given that the public hearing for the proposed rule (published at 60 FR 66036, December 20, 1995) relating to revision of the definition of